

Argyll and Bute Council

Comhairle Earra Ghaidheal agus Bhoid

Executive Director: Douglas Hendry



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15 November 2021

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held **BY MICROSOFT TEAMS** on **TUESDAY, 23 NOVEMBER 2021** at **10:30 AM**, which you are requested to attend.

Douglas Hendry
Executive Director

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST**
3. **MISS BARBARA SMITH: TEMPORARY CHANGE OF USE OF DWELLINGHOUSE AND CURTILAGE TO WILDLIFE RESCUE CENTRE (RETROSPECTIVE): 19 LOCHAN AVENUE, KIRN DUNOON (REF: 21/00514/PP) (Pages 3 - 42)**

Report by Head of Development and Economic Growth

Planning, Protective Services and Licensing Committee

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

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

Contact: Fiona McCallum

Tel. No. 01546 604392

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Argyll and Bute Council
Development & Economic Growth

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: 21/00514/PP
Planning Hierarchy: Local
Applicant: Miss Barbara Smith
Proposal: Temporary change of use of dwellinghouse and curtilage to wildlife rescue centre (retrospective)
Site Address: 19 Lochan Avenue, Kirn, Dunoon, Argyll And Bute PA23 8HT

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Change of use from dwellinghouse (Class 9) to wildlife rescue (sui-generis)
- Erection of pens and aviary structures within the rear curtilage

(ii) Other specified operations

- None
-

(B) RECOMMENDATION:

It is recommended that planning permission be granted subject to:

- (i) a pre-determination hearing; and
 - (ii) conditions
-

(C) CONSULTATIONS:

Area Roads – 02.08.2021 – Recommends that determination be deferred on the basis that the proposed use will require a total of 4 no. off street parking spaces whereas the site currently has a maximum of 3 no. spaces. This assessment is based on 2 no. spaces for a 3-bedroom dwellinghouse and 2 no. spaces based on 5-7 persons per shift engaged in the wildlife rescue use.

27.08.2021 – Re-assessment of the on-site car parking requirement has resulted in a revised parking requirement for a total of 3 no. spaces. This re-assessment followed clarification of the nature of the use by the applicant and is based on 1no.

space for the owner/manager and 2no. spaces for up to six volunteers/persons per shift engaged in the wildlife rescue centre. The residential element of the use is assessed as ancillary staff (normally the manager) accommodation ancillary to the wildlife rescue use. Currently there are 3no. spaces available.

Environmental Health – 08.06.2021 – No objection subject to planning conditions and advisory notes to mitigate against loss of amenity by reason of external lighting, animal noise, general nuisance and storage/disposal of waste. It is recommended that the applicant be required to submit a Management Plan with regard to the above matters.

25.08.2021 – A Risk Management Plan has been submitted in response to the above comments from Environmental Health. The EHO is satisfied that the Risk Management Plan submitted adequately covers what being sought by means of condition 4 recommended in the response of 08.06.2021 (above). However, Management Plans for things covered are not set in stone and if there were to be an issue then they need to be revised and amended accordingly.

Animal Health and Welfare Officer – No response to date.

Dunoon Community Council – Objection. Unauthorised development and breach of planning control that presents a threat and detriment to residents on road safety, health and safety and bad neighbourhood type activity which has a significant detrimental impact for the residents living in the vicinity.

Hunters Quay Community Council – Dwellinghouse in a residential area is not an appropriate location for this proposed use. Given that this use has developed at the site since 2013 with the knowledge of the Council, it is felt that the Council has a responsibility to provide a mutually acceptable solution, including identification of an appropriate alternative site. The application should be assessed with due regard to the history and development of the use over the last 8 years. HQCC feel strongly that cooperation with all involved in finding alternative site(s) is the way ahead.

Sandbank Community Council – 16.08.2021 – Support. The facility makes a small-scale but welcome contribution to ecological protection and conservation and exemplifies the types of initiative that may support Government efforts to forestall climate change and resultant adverse effects on biodiversity.

(D) HISTORY:

18/00042/ENOTH1 – Alleged unauthorised change of use of house to wildlife rescue – Pending Consideration. A recommendation in respect of enforcement is to be presented separately to the Committee.

(E) PUBLICITY:

Regulation 20 Advert Local Application – Expired 9th July 2021

Neighbour Consultation - Expired 25th June 2021

(F) REPRESENTATIONS:

(i) Representations received from:

A total of 89 no. representations have been received, 'broken down' as follows:-

- 47 no. representations objections;
- 41 no. representations of support; and,
- 1 no. representation (indicating neither support or objection)

Objections

Mr Brian Mcgugan - 9 Clyde Street Kilm Dunoon Argyll And Bute PA23 8DX
Mrs Sheila Mcgugan - 9 Clyde Street Kilm Dunoon Argyll And Bute PA23 8DX
Miss Emily Mcgugan - 9 Clyde Street Kilm Dunoon Argyll And Bute PA23 8DX
Mrs Annamarie Penman - 49A Mary Street Dunoon Argyll And Bute PA23 7EG
Mrs Anne Macaffer - 18 Douglas Cottages Park Road Kilm Dunoon PA23 8JN
Miss Lynda MacDonald - 20 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Miss Chloe MacDonald - 20 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Miss Clare MacDonald - 20 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Mrs Scott - 18 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
The Rev. Randolph Scott - 18 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Rahel Fisseha Gebremeskel - 5 Lochan Avenue Kilm Dunoon Argyll And Bute
Sharon Barnard - 21 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Mr Stephen Barnard - 21 Lochan Avenue Kilm Dunoon Argyll And Bute
Cllr Alan Reid - 136 Fairhaven Kilm Dunoon Argyll And Bute PA23 8NS
Melanie McKinnon - 11 Queen Street Dunoon Argyll And Bute PA23
Brian McKinnon - 11 Queen Street Dunoon Argyll And Bute PA23
Mr A Smart - 86 Ardenslate Road Kilm Dunoon Argyll And Bute PA23 8HX
Cllr. Bobby Good
Mr D Band - 22 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Mrs L Band - 22 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Brian Johnston - 23 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Roma Johnston - 23 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Anne Dunphy - 4 Lochan Avenue Kilm Dunoon Argyll And Bute
Mrs Audrey MacDougall - 6 Lochan Avenue Kilm Dunoon Argyll And Bute
Ms Nicola Brooks - 75 Queen Street Dunoon Argyll And Bute PA23
Cllr Yvonne McNeilly
Jo Smith – No address given
James R T Walsh - Victoria Villa 34 Royal Crescent Dunoon Argyll
Cllr. Jim Anderson - 5 Alexander Street Dunoon Argyll And Bute PA23
John F McDougall - 8 Lochan Avenue, Dunoon
Mrs Margaret Whyte - Strathaven Cromlech Grove Sandbank Dunoon PA23 8QJ
Nicola McCarthy - 116 Auchamore Road Dunoon Argyll And Bute
Mrs A S Donald - 16 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Mr J Donald - 16 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Miss Freja Ledsom - 3 Edward Street Dunoon Argyll And Bute PA23 7JF
Alison MacQuarrie – No address provided
Mrs Caroline Cameron - 3 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Jennifer Grayson – No address given
Elizabeth McCombe - 25 Valrose Terrace Dunoon Argyll And Bute PA23
Derek Knowles - 15 Lochan Avenue Kilm Dunoon Argyll And Bute PA23 8HT
Miss Lucy Robertson - 37 Alexandra Parade Dunoon Argyll And Bute PA23 8AF
Anne Campbell - 209 Edward Street Dunoon Argyll And Bute PA23 7PJ
James Wilson - 30 George Street Hunters Quay Dunoon Argyll And Bute PA23 8JU
Mrs Moira MacDonald - 59 King Street Dunoon Argyll And Bute PA23 7PE
Helena Kowaliw - Heathbank Kilmun Dunoon Argyll And Bute PA23
Marilyn A Meyer - 17 Wellington Street Dunoon Argyll And Bute PA23 7LA
Mr A Smart - 86 Ardenslate Road Kilm Dunoon Argyll And Bute PA23 8HX

Representation

Iain MacNaughton – “Scenic Sandbank” – No address given

Support

Ms Lorna Ahlquist - 93A Shore Road Innellan Dunoon Argyll And Bute PA23 7SP
Mr Allan Turnbull - 80 Ardenslate Road Kilm Dunoon Argyll And Bute PA23 8HX
Stacey Mckinven - 14 Douglas Cottages Park Road Kilm Dunoon
Tracy Stock - Crossroads Cottage Millhouse Tighnabruaich
Duncan Oxland - 5 Kilmun Court Kilmun Dunoon Argyll And Bute PA23 8SF
Fiona Montgomery - Ground Flat 141 Victoria Road Dunoon Argyll And Bute PA23 7NU
Tracy Macpherson - 5 Mckinlays Quay, Sandbank, Dunoon, Argyll And Bute PA23 8NZ
Mr Andy North - 99 Queen St Dunoon PA23 8AX
Miss Kara Martin - 34 Hamilton Street Dunoon Argyll And Bute PA23 7RH
Gemma Robinson - Fornello Toward Dunoon Argyll And Bute PA23
Mrs Carrina North - 99 Queen Street Dunoon Argyll And Bute PA23
Mr Andy Macpherson - 5 Mckinlays Quay Sandbank Dunoon Argyll And Bute PA23 8NZ
Caroline Joelsson - Donrhona Sandbank Dunoon Argyll And Bute PA23 8QS
Mr Richard Murry - 12 Glenacre Innellan Dunoon Argyll And Bute
Rob Hayes - 20 Kilmun Court Kilmun Dunoon Argyll And Bute
Cheryl McEwan - 8 Ardenfield Ardentinn Dunoon Argyll And Bute PA23 8TU
Ms Susan Minns - Finnartmore Cottage Kilmun Dunoon Argyll And Bute PA23 8RY
Sheena Geraghty - 9 Glenmorag Avenue Dunoon Argyll And Bute
Ms Claire Segeren - Jameswood Villa, High Road Sandbank PA23 8PN
Emma Stewart - 151 George Street Dunoon Argyll And Bute PA23 8BS
Ruth Ross - 47 Shore Road Innellan Dunoon Argyll And Bute PA23 7TJ
Mrs Marta Dudek - Glenlonan House Cromlech Road Sandbank
Mrs Jennifer Gray - 3 Dixon Place Kilm Dunoon Argyll And Bute PA23
Mrs Sharon McNab - Alt-Cromadh Ferguslie Street Sandbank Dunoon
Kirstin-Shona Black - 11 Kilbride Road Dunoon Argyll And Bute PA23 7LL
Gwen Lees - Upper Flat 22 Jane Street Dunoon Argyll And Bute
Frances Lynn - 61B Marine Parade Kilm Dunoon Argyll And Bute PA23 8HF
Miss Seylan Baxter - 66 Auchamore Road Dunoon Argyll And Bute
Ms Alicia Armstrong - 20 Kilmun Court, Kilmun, Dunoon, Argyll And Bute
Elaine Deehan - 56 King Street Dunoon Argyll And Bute PA23 7PE
Jennifer Wilson - 19 Castle Street Port Bannatyne Isle Of Bute PA20 0ND
Debbie Wishart - 50 Argyll Road Kilm Dunoon Argyll And Bute PA23 8EG
Alan Wishart - 55 Edward Street Dunoon Argyll And Bute PA23 7JN
Miss Gillian Donaldson - 102 Shore Road Innellan Dunoon PA23 7SR
Mrs. Mairi Ronald - Highfield Craigend Kilmun Dunoon Argyll And Bute PA23 8SE
Julie Merrifield - 56 Cowal Place Dunoon Argyll And Bute PA23 7PX
Frances R Lynn - 61B Marine Parade, Kilm, Dunoon, Argyll And Bute
Mrs. Rhona Altin - Altinev Sandbank Dunoon Argyll And Bute PA23 8PN
Stacey Waters - 37 Newton Park Innellan Dunoon Argyll And Bute PA23 7ST
Mr. Adrian Russell - Flat 2 Parklea 142A Auchamore Road Dunoon
Ms. Susan Cruikshank - 27 Cammesreinach Crescent Hunters Quay

(ii) Summary of issues raised:

Contrary to Planning Policy

- The use does not comply with the development plan policy. Specific reference is made to LDP Key Objective A; Policy LDP 3(C); Policy LDP 8.

Comment: - An assessment in relation to the relevant policies of the Local Development Plan will be set out in detail within sections (J), (P) and (Q) below.

Incompatible Use to Residential Area

- Inappropriate location/siting relative to surrounding residential land-use.

Comment: - Physical changes to the property in terms of pens etc. are not considered to result in a visual character that is incongruous within the residential street. The impacts upon residential amenities and with regard to traffic generation/parking will be assessed elsewhere within this report.

- Precedent examples of case-law are given regarding the impact of a piggery and a flock of hens respectively upon residential amenities.
- To allow an incompatible commercial use within a residential area would set an undesirable precedent for a range of inappropriate commercial uses within residential areas.
- The residential property is not suitable for purpose

Comment: - The application will be fully assessed with regard to all material considerations relevant to this specific proposal. The applicant acknowledges that the location and nature of the property severely limits the aspirations for the facility and has advised that an alternative site is actively being sought.

Impact on Residential Amenity and Health & Safety

- Management practices including external storage of animal waste and power-washing animal cages in proximity to a window to a neighbouring property has produced a rat infestation and causes a significant health risk.
- Potential risk of spread of diseases as property unsuitable for proper cleaning and disinfecting.
- Accumulation of a large amount of bird excrement. Odour attracts birds e.g gulls, to congregate on the roof of the property resulting in further accumulations of bird excrement affecting nearby properties and cars.
- The wildlife rescue centre attracts wild birds that prey on local wildlife and local 'garden bird' species.
- Rat infestation caused by presence of wildlife, animal waste/bedding, animal food and excess rubbish.
- Extreme noise. This can affect neighbours sleep during night-time hours leading to the detriment of general health and well-being.
- Extreme smell
- Animal waste bags in the driveway

Comment: - Impact upon residential amenities and health & safety of residents of nearby houses is acknowledged as one of (if not 'the') main consideration(s) material to this assessment. These issues will be fully assessed within section (P) below.

Visual Amenity

- It is submitted that the site has been significantly cleaned/tidied since submission of the planning application and that the current appearance/condition of the site does not reflect the 'normal' situation (shown in objector's photographs.)

Comment: - All available information with regard to issues of impact upon residential amenity will be given due weight as part of a balanced assessment. This includes photographs submitted by objectors at

particular times and the observations of several Council planning officers that have visited this site on a number of occasions over the past 3 years.

- Animal cages in front and rear gardens and inside the house makes this property “unsightly” and “Different from the others”.

Comment: - Based on two site visits, it is noted that views of the pens within the rear curtilage are largely, if not exclusively, limited to views from within the application site, and as such do not result in any significant visual intrusion within public views. The scale, nature and appearance of several small animal pens against the front wall of the house is not untypical of the level of domestic paraphernalia found in residential properties and, as such, the application property does not stand out as being out of keeping with the visual residential character of the street as a whole. Likewise, the view of several bird cages within the interior of the house through a living room window does not, in the opinion of the planning authority, present a level of visual intrusion such as to materially change the visual character or appearance of the dwellinghouse so that it appears as incongruous in relation to nearby houses. The planning authority is satisfied that the proposed use is capable of being operated without detriment to visual character/amenity in accordance with the relevant provisions of the Local Development Plan.

Highways and Parking

- Visitors, including volunteer helpers, to the application property result in parked cars blocking the road and on occasion, access to neighbours driveways. This has caused a number of aggressive/abusive confrontations with neighbours.
- Specifically, an intensification of localised on-street parking generated by the wildlife rescue centre obstructs carers and other visitors from parking near a neighbouring house where the resident requires care assistance twice daily. Ability to park near the house is required due to limited mobility issues.

Comment: - The Council's Area Roads Engineer has advised that the use generates a demand for 3 no. car parking spaces on site. There are currently 3 no. spaces available on site. The Council's Area Roads Engineer has no objection in terms of parking provision.

- Increased traffic volumes and speed of vehicles generated by the use results in highway hazards e.g. to children playing.

Comment: - The consultation response by the Council's Area Roads Engineer indicates that the local public adopted road regime is appropriate to serve the use.

Planning Enforcement

- The use as a wildlife centre should have ceased from 26th November 2019 by virtue of service of an enforcement notice.

- Service of a Section 33 Notice by the planning authority recognises the problems experienced by residents. Concern is expressed if the planning authority were now to make this use lawful.

Comment: - A commentary on the timescale of main events related to enforcement case reference 18/00042/ENOTH1 is set out in more detail in Section B of Appendix A (below.) It is confirmed that an Enforcement Notice was served on the proprietor of the wildlife rescue on 26.07.219. This notice took effect on 26th August 2019 prescribing a 3 month period expiring 26th November 2019 within which the unauthorised use was to cease. The investigating officer visited the site on 11.12.2019 and confirmed that the use had not ceased. Officers then commenced an assessment of how to progress enforcement. This is a far from straightforward process and involved engagement with elected Council Members, legal services and external agencies. Having concluded the most appropriate form of action, progress was interrupted and severely frustrated by the unexpected impact of COVID 19 and resultant implications for the planning service. Allegations that the planning authority's handling of the enforcement process demonstrates a lack of acknowledgement of objectors' concerns or an unbalanced favour towards the applicant is not accepted.

- Concern is expressed regarding the length of time (8 years) that the property has been operating without the benefit of planning permission and in some instances the role of the planning authority and the cumbersome nature of the planning process in allowing this situation to develop.

Comment: - The investigation has not extended for a period of 8 years as claimed by several objectors. The original complaint was made to the Council's Planning Service in February 2018 and a breach of planning control was confirmed on 2nd July 2018 (approximately three years ago) following an extended period of monitoring. A summary and commentary of the time-scale in relation to action by the planning authority is set out in greater detail in Appendix A, section B for information.

- An application for planning permission should not have been accepted by the planning authority given the enforcement history.

Comment: - Enforcement proceedings were instigated upon consideration that a material change of use had occurred in July 2018. An application for planning permission was formally invited at that time. An Enforcement Notice was served on the basis that an application for planning permission was not forthcoming. At no time during the enforcement discussions was it indicated that an application for planning permission would be refused but that it would allow a full assessment to be carried out. It is entirely appropriate that the planning authority now assess the application for planning permission. Enforcement will be assessed and reported on in conjunction with the planning application

- There are feelings of unfairness, improper balance and proportionality by the planning authority in respect of this property leading to an alleged perceived lack of competency by, and confidence in the planning authority.

Comment: - Allegations of impropriety, lack of competence and lack of impartiality by Council planning officers is strongly refuted and moreover is disappointing given the amount of resources that the planning authority (and other Council services) have given to investigating this issue. However, such allegations are not specifically material to this assessment and should be pursued by objectors by means of separate procedures available.

Animal Welfare

- Poor and unsuitable environment for the housing of wildlife leading to concerns regarding animal welfare.
- Representations of support from people who have used the centre indicate that the proprietor is appropriately qualified and training is given to volunteers.
- Levels of dedication and animal welfare/accommodation is commended.
- Examples are given of many injured and/or sick animals that have been successfully treated at the facility.
- It is suggested that objections regarding sub-standard animal welfare are based on misinformation.

Comment: - The supporting information submitted with the application advises that the animal rescue has an established operational relationship with the Scottish Society for the Protection of Animals (SSPCA) and local vet practices. In addition. These agencies, by nature, have a duty of care towards animals. Whilst the concerns regarding animal welfare are obviously well intentioned, on balance, it is considered that the lack of intervention by local vets or the SSPCA, carries more material weight than speculative concerns that animals are experiencing cruelty or poor welfare by reason of limitations of the site. In the absence of any evidence supporting poor animal welfare concerns, particularly in light of an operational relationship with the SSPCA, it is not accepted that the limitations of the property results in poor animal welfare practices.

Miscellaneous

- The planning statement states the hours of operation as 9am-6pm. This conflicts with the request for volunteers which advises hours of 9am – 9pm with potential for 24 hours in the case of emergencies.

Comment: - Noted.

- Several objections include allegations regarding un-cooperative/abusive behaviour by the applicant to neighbours.

Comment: - Allegations of a personal nature must not be taken into account as part of this assessment. Such allegations are unfortunate and do not add value to a robust and professional assessment based on material planning matters.

- Confirmation is sought whether the applicant has applied for a license under recently introduced regulation.

Comment: - The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Act 2021 comes into force on 1st September 2021. It

is recommended that any planning permission be accompanied by an advisory note reminding the applicant of their responsibility and obligations to have regard to the provisions of the Act including the requirement to apply for a license in due course. Further detail is set out in the consultation response from the Council's Environmental Health Officer. However, this is a separate licensing control to land use planning statutory consent and as such future assessment of a license application to be carried out with reference to the guidance should not prejudice the assessment of material land-use planning matters. In other words, any approval of planning permission, will not prejudice the assessment of a subsequent licence carried out under the provisions of the aforementioned Animal Welfare Act 2021.

- The applicant has erected a fence (and is storing some metal, mesh screens) on land between the application property and no. 18 that block access for painting and repairing of the sides of the houses.
- The applicant has attached fencing to the fence posts of the adjoining neighbours fence meaning that the neighbour has no access to the 'other' side of their fence for painting and repair

Comment: - The boundary fencing is not a direct result of the proposal. The same boundary fence could be erected (within the parameters of 'Residential Permitted Development' as set out in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992) without the requirement for express planning permission. The planning authority has no control over such development. Ready access to the rear face of the neighbour's fence for maintenance is a private civil matter and not material to this assessment in respect of temporary use (retrospective) of the property for wildlife rescue. The vertical storage of 4 no. mesh panels adjacent to the gable wall is entirely within the ownership of no. 19. If these panels conflict with any rights of access then this is also a private civil matter.

- Fundraising and plans for a more appropriate site has not delivered to the level requested.

Comment: - It is assumed that these representations casts doubt on the realistic potential for the wildlife rescue to procure an alternative site and as such that a temporary consent is not justified. It would be inappropriate for the planning authority to enter into conjecture as to whether funds are available, or will become available, for the procurement of an alternative site. This application will therefore be assessed on the basis that the operator is actively and genuinely engaged in searching for an alternative location.

- Granting temporary consent will serve to establish a legal use because of the time period taken with the enforcement process

Comment: - The point being made is not entirely clear. For clarity, the use will not become legal after expiry of 10 years by virtue of the serving of formal notices under the provisions of Section 33A and Section 127 of the Town and Country Planning (Scotland) Act 1997 unless planning permission is approved. The time taken with the enforcement process (some three years) is not material.

- Several representations support and commend the intentions of the applicant whilst stating that the site is inappropriate for the use and that an alternative site more remote from an established residential area would be appropriate in all respects.

Comment: - Noted.

- Impact on the value of neighbours properties.
- The use is against the legal requirements in the title restrictions set out within the Feu Charter by the Borough Council.
- Business rates should be applied
- Operation of the facility is being carried out illegally with reference to Coronavirus restrictions.
- Comments of a personal nature have been made with reference to the applicant.

Comment: - *Whilst the concerns expressed are appreciated these issues are immaterial to this planning assessment. Allegations of a personal nature, some of which are anecdotal, do not add any value to a balanced and professional assessment of this proposal with regard to material planning considerations. As such no weight will be given to such allegations as part of this assessment.*

Support

- General support for a much-needed community facility which contributes to protection of bio-diversity and environmental conservation. The use should be viewed within a wider context of environmental benefit.
- There is nowhere else locally to take sick/injured animals.
- A short-term temporary use is justified in order to allow the applicant to find an alternative site. It is understood that the applicant is actively engaged in seeking an alternative site.
- The Wildlife Rescue provides a wider community benefits by giving people with disabilities an opportunity to gain self-confidence and positive life experience.
- Every inspection by the Council/SSPCA is above the required standard.
- The appearance of the site is not offensive (one representation of support recommends that the number of enclosures in the rear curtilage could be reduced).

Comment: Noted

(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: | No |

- | | |
|---|--|
| <p>(iv) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:</p> | <p>Yes – Supporting Statements (a summary of key issues is set out below) and a Risk Management Plan</p> |
|---|--|

Supporting Statement – Received 10.03.2021

- The Wildlife Rescue Facility is a registered charity that treats, rehabilitates and releases sick, injured and orphaned wildlife.
- Applicant is a qualified and insured marine mammal medic.
- The centre is supported by local vets and regularly engage with the local police wildlife team, council warden and a large range of specialists. It works closely with and are supported by the Scottish SPCA, attending and dealing with their wildlife calls for this area.
- In addition, the centre works closely with Hessilhead (in Ayrshire) & Vale Wildlife Hospital, who fully support the centre providing policies and procedures and sharing best practice based on 39+ years of experience. Long term volunteers are taken to Vale for a week to provide continued professional development and external training in wildlife care.
- Centre has wider community benefits including removing the stress from individuals who find sick, injured or orphaned animals; raising awareness and education through regular school visits; positive confidence, physical and mental health, and well-being benefits to volunteers.
- It is acknowledged that the aims and objectives for the centre are hugely limited by the current site. The centre is actively working towards securing a site to develop a purpose built centre to meet the demands from the local community and the aims of the charity. It is specifically noted that the current application is for temporary planning permission on this basis.
- The centre started “unintentionally” from the application property 8 years ago.
- 5 full-time and 10+ part-time volunteers (around 5-7 volunteers in shifts daily)
- Staggered volunteer shift pattern is utilized to address space limitations and additional limitations such as Covid and Bird Flu.
- Volunteer hours are normally 9am-6pm with work at unsociable hours limited to occasional emergencies.
- Capacity is fluid depending on seasonal changes and the types of animals received, however an average animals at any one time is 70-100 with a current average of 500+ annually.
- There are a number of procedures in place to maintain capacity/availability while ensuring animal needs being met in full. These include SSPCA support by taking animals to their Alloa centre and taking some animals to Hessilhead.
- Further limitations include external events such as the current H5N1 (Bird Flu) outbreak. This means changes to outdoor pens and quarantine facilities in addition to restricted access and handling.
- Operational management statements set out procedures with regard to:
 -
 - Waste, Odour and Noise Mitigation:
 - Pest Control/Management; and
 - Noise Control/Mitigation
 - Traffic/Parking
- With specific regard to pest control, the applicant notes that there was an issue last year further along the avenue although the wildlife rescue

centre was not directly affected. Given the location adjacent to woodland and neighbours keeping outdoor poultry the number of rodents isn't abnormal.

- With regard to parking, the property has 3 no. off-street car parking spaces on the driveway and the road outside the house is unrestricted. Volunteers currently bring an average of 3 cars (sometimes more). There is adequate parking and there has been no issues with neighbours finding parking with the exception of one neighbour who expressed objections to where the applicant parked on the street (this pre-dated the wildlife rescue centre use.)
- Deliveries are no more than any other family house on the street. No regular suppliers that require anything more than a standard van.
- There are 7 no. external pens. A description of the purpose, size and design are set out.
- Freezers and general residential storage is provided in the garage. This space is also occasionally used to temporarily house animals in a quarantine type set up.
- The centre rents external storage for excess cages, stock for fundraising sale and other general (non-food) storage.
- Animals are housed in the house during their stay according to their needs.
- The house remains the principle residence of the applicant.
- In terms of the use of space (inside and out) both the SSPCA and Environmental Health have visited regularly and there have been no advisories from either confirming that there is no negative impact on how the centre works on either animal welfare or hygiene.

Supporting Statement – Response to Issues Raised with Objections General

- At least 9 of the objections are duplicated by members of the same house.
- Many of the objections are based on assumptions e.g it “must” smell, it “must” be terrible, etc.

Parking/traffic issues

- There are rarely any issues with finding an on-street car parking space or getting past. Many other houses have more than 2 cars and don't use their driveways. The Management Plan addresses potential issues generated by the wildlife rescue use.

Animal noise from the rescue

- The centre has very few animals that make any real noise and even fewer of them outside e.g crows do not sing or call unless in response to perceived threat. They do not call at night. There are protocols in place to minimise noise for those that do make noise. There is potential for natural noises in the area given the adjacent woodland and proximity to the coast and the applicant feels that that there is a perception that ‘natural’ wildlife noises are being included in the ‘blame’ directed at the wildlife rescue use.

Attracting wild animals to the area

- There has been a reduction in wild birds since the rescue use expanded into the rear garden. Despite claims, wild seagulls are not fed or encouraged. Any food put out is done is on a strict policy to ensure that

intended birds get it and not in a way that encourages gulls. A resident falcon discourages bird visitors. These issues are addressed by the Risk Management Plan.

Fouling from wild birds attracted by the smell of the wildlife rescue

- Fewer visiting birds. Birds have a poor sense of smell. The centre has feeding and cleaning policies to prevent risk of disease transfer from wild birds to patients – would be aware of any increase or excess of excrement.

Attracting vermin

- Addressed in Risk Management Plan. Procedures in place to minimize any attraction of vermin. There have only been rats in the area during one period when it was a much wider problem affecting large areas of Dunoon.

Foul smell externally

- Addressed by Risk Management Plan. Strict hygiene rules in place. It is submitted that the property does not smell internally never mind externally.

Condition of animals

- Objection based on misinformed assumption. The centre works closely with other rescues including the SSPCA and the local vet. SSPCA officers are regular visitors to the facility. Policies and protocols are based around those of other established wildlife hospitals and each animal's welfare is paramount.

Children and rescue

- The centre organises educational visits to schools. The centre is not open to the public. Strict protocols are followed with regard to parental consent and introductions. Parents where appropriate are made fully aware of expectations and risks. Rarely allow volunteers under 16 years old. The applicant is not aware of an incident of a traumatised child having attended the centre (as claimed by a 3rd party objector.)

Government guidelines and legislation

- Fully aware of, and operate in accordance with all relevant legislation, Acts, protocols and restrictions with specific reference to Covid & HPAI H⁵N1 & strains (Bird Flu) along with countless others.

(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.**

'Argyll and Bute Local Development Plan' Adopted March 2015

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 8 – Supporting the Strength of our Communities.
LDP 9 – Development Setting, Layout and Design
LDP 11 – Improving our Connectivity and Infrastructure

'Supplementary Guidance to the Argyll and Bute Local Plan 2015' (Adopted March 2016)

Enforcement Action

SG LDP ENF – Enforcement Action

Bad Neighbour Development

SG LDP BAD 1 – Bad Neighbour Development

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Resources and Consumption

SG LDP SERV 5(b) – Provision of Waste Storage & Collection Facilities within New Development

Transport (Including Core Paths)

SG LDP TRAN 4 – New & Existing, Public Roads & Private Access Regimes

SG LDP TRAN 6 – Vehicle Parking Provision

- (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 3/2013.**

- Scottish Planning Policy
- Consultation responses
- Material planning considerations raised in third party representations

- Argyll and Bute proposed Local Development Plan 2 (November 2019) – The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:
 - Policy 14 – Bad Neighbour Development
 - Policy 35 – Design of New and Existing, Public Roads and Private Access Regimes

(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: Yes

A total of 89 representations have been received comprising 47 objections, 41 in support and 1 offering representations that are neither clearly objection nor support.

The approved Hearing protocol advocates a lesser emphasis on the previous numbers (of representations) threshold as a 'trigger' for a Hearing and more reliance on a criteria based approach in order to 'add value' to the determination process.

- Notwithstanding the total number of representations, and the level of controversy, there is an approximate balance in numbers of support and objection. It is considered that the assessment by the Development Management Service, and the recommendation, is firmly based on an impartial and appropriately balanced approach.
- The material considerations in relation to the proposal are not considered to be significantly complex and are largely limited to impact on technical highways capacity/on-site parking matters and impact upon the character and amenities of the local area and residents.
- The proposed change of use is considered to be consistent with up-to-date Local Development Plan policies and supplementary guidance. As such, the recommendation does not seek to justify a departure to the provisions of the Local Development Plan.

On balance, given the numbers both for and against the development and the comments from three Community Councils, it is considered that a Pre-

Determination Hearing will add value to the decision-making process, and is recommended in this instance.

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

The planning application site comprises a 3-bedroom bungalow and its associate curtilage, located within a residential cul-de-sac within the key settlement of Dunoon.

The application proposes a temporary change of use from a residential property to a wildlife rescue facility for the treatment, rehabilitation and release of sick, injured and orphaned wildlife. Although numbers and types of animals/birds can fluctuate, it is typically within 70-100 animals at any one time with approximately 500 plus animals passing through the facility annually. The majority of animals are accommodated within several rooms inside the bungalow. Birds and animals are accommodated within 7no. exterior pens located in the rear curtilage according to their rehabilitation needs. The rescue facility currently operates 5 full-time and 10+ part-time volunteers. Approximately 5-7 volunteers attend the site daily in a staggered shift pattern typically limited to within the hours of 9am-6pm (with occasional exceptions justified by emergencies.)

A wide range of concerns has been raised by objectors. Whilst it is acknowledged that the issues are of genuine interest and concern to objectors, many of the issues are not material to this planning assessment and as such cannot be given any weight as part of this assessment. A summary of the issues raised is set out in section (F) above, however this assessment will now be restricted to material land use planning considerations.

It is considered that the material considerations can be broadly categorised as follows: -

- 1) The appropriateness or otherwise of this homogeneous residential area for the operation of a wildlife rescue facility and detriment to residential amenities, health and safety primarily by reason of noise intrusion; unpleasant odours; increased bird fouling; attraction of insects and vermin; and infection.
- 2) Detrimental impact on the visual amenities and residential character of this area.
- 3) Intensification of traffic that results in congestion and highway hazards.
- 4) Whether the proposal is contrary to the provisions of the Local Development Plan.

It is not straightforward to quantify effects on residential amenity on the basis of several site visits as this fails to take into account the cumulative impact of low level intrusion and individual instances of intrusion e.g. animal calls during the night time/early hours. The representations of objection and the supporting statement contain areas of conflict with regard to such impacts and the 'generator' for animal/bird calls. In the absence of quantifiable evidence it is considered that significant material weight should be afforded to the consultation response by the Council's Environmental Health Service. (It is noted that Environmental Health Officers have been involved at various times over the last 3 years in relation to noise

and nuisance impact.) It is therefore considered that the site is capable of operating as a wildlife rescue facility subject to it being operated in accordance with a Management Plan to mitigate amenity nuisance and health issues.

Notwithstanding the objections on highways grounds, the consultation response by the Area Roads Engineer indicates that the local public road regime is appropriate to accommodate any intensification of traffic without detriment to the free flow of traffic or road hazard.

The Area Roads Engineer has also advised that the site can accommodate 3 no. off-street parking spaces as required to serve the proposed change of use.

The visual changes to the property are almost exclusively restricted to the rear curtilage and are not prominent within public views. Notwithstanding objections regarding the unsightly nature of the site, it is considered that the external appearance of the property from the street is not materially different from the visual character of the other houses. As such, the proposal is considered to be consistent with the provisions of policy 9 and Supplementary Guidance on Sustainable Siting and Design Principles.

The site is located within the settlement zone for the main town of Dunoon as identified in the Argyll and Bute Local Development Plan 2015, wherein policy DM 1 (A) gives encouragement in principle for sustainable forms of development on appropriate sites. It is acknowledged that the site comprises a residential property located within an area with a homogenous residential character. It is also acknowledged that an application for change of use of a house to a commercial character of development would not normally be accepted with reference to LDP policy. However, it has to be taken into account that an authorised residential use can include the keeping of a relatively significant number and variety of animals and/or birds without a material change of use having occurred. Based on all material considerations, particularly the consultation responses, it is considered that the nature and level of animals/birds accommodated on this site (particularly those within the rear curtilage) in relation to the treatment/rescue use will not result in such a significant level of intrusive impact over and above what could be caused by an unauthorised residential use, and that impact on residential amenities can be mitigated to an acceptable level by a Management Plan.

However, it is acknowledged that the site is not appropriate for any intensification of the wildlife rescue facility given its location. It is noted that the application is for a temporary change of use on the basis that the wildlife rescue is actively seeking an alternative location that does not limit the expansion of the scale and nature of the facility. In this context, it is considered that a temporary planning permission would be justified in this instance. This can be achieved by an appropriate planning condition such that on the expiry of the temporary period, the site will automatically revert to its original authorised use as a dwellinghouse. It is recommended that a three year period would be appropriate in relation to proposed procurement of an alternative location.

(Q) Is the proposal consistent with the Development Plan: Yes

(R) Reasons why Planning Permission or Planning Permission in Principle Should be Granted:

The proposed temporary use can be accommodated within the site without undue detriment to residential or visual amenities subject to ongoing operation in accordance with a Management Plan to be agreed in consultation with Environmental Health in order to mitigate against noise and general nuisance. As such the proposal is consistent with Policies LDP 9 and SG LDP BAD 1. Subject to provision of a total of 3 no. parking spaces it is considered that the proposed use will not have a materially detrimental impact upon highways issues in accordance with policies LDP 11 and SG TRAN 4 and TRAN 6. The proposed development does not have any substantive detrimental impact on the visual amenity and character of the site and its surrounding consistent with policy LDP 9 and SG – Sustainable. A temporary consent can be justified in order to allow the opportunity to continue the wildlife rescue facility at its current capacity whilst allowing the opportunity for the operator to seek an alternative location.

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

Not applicable – It is considered that the proposal accords with all relevant provisions of the Local Development Plan.

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

Author of Report: Norman Shewan **Date:** 2nd September 2021

Reviewing Officer: Howard Young **Date:** 2nd September 2021

Fergus Murray
Head of Development and Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 21/00514/PP

1. The development shall be implemented in accordance with the details specified on the application form dated 9th March 2021 and the approved drawing reference numbers 1 of 3 – Site Location Plan at 1:2500; drawing no. 210304-BWR-01 – Site Plan; and drawing no. 210304-BWR-01 – Floor Plan, unless the prior written approval of the planning authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

2. This permission shall cease on or before the date three years from the date of this planning permission; other than in the event of a further permission for continued use having been granted upon application to the Planning Authority. Upon the date three years from the date of this consent, or upon cessation of the approved use prior to that date (whichever is sooner) the authorised use of the application shall revert to a single residential dwellinghouse (Class 9). Within three months of the cessation of the use all portable buildings/structures associated with the animal rescue operation shall be removed from the site.

Reason: To define the permission in order to allow the opportunity for the applicant to procure an alternative site for the relocation of this wildlife rescue facility and in order to protect the residential amenity of the residents of nearby houses.

3. There shall be no open storage or new structures used for the housing of animals in the front garden/curtilage of the application site, as defined by the site edged red, unless otherwise agreed in writing by the Planning Authority.

Reason: In the interests of residential amenity.

4. Any temporary structures (including cages, enclosures and aviaries) sited within the rear 'garden/curtilage' of the application site, as defined by the site edged red, utilised for the purposes of housing animals or for storage shall not exceed a height of 3 metres at the eaves or exceed 4 metres in height overall. Any part of a structure(s) within 1 metre of the boundary of the curtilage of the property shall not exceed 2.5 metres in height. The cumulative footprint of structures shall not exceed 50% of the area of the rear 'garden/curtilage' excluding the original dwellinghouse footprint.

Reason: To ensure that the scale of any temporary structures within the rear 'garden/curtilage' of the property remains in keeping with the residential character of the locale.

5. The activity of the wildlife rescue at the property shall be operated fully in accordance with the approved Risk Management Plan, or any subsequent amended version of the

Risk Management Plan that has been submitted to and approved in writing by the planning authority in consultation with Environmental Health.

Reason: In order to avoid detrimental impact upon the residential amenity and to protect health and safety of residents of nearby houses by reason of intrusive noise; odours: attraction of insects and/or rodents; and general nuisance.

6. All external lighting on the application site should comply with the Scottish Government Guidance Note "Controlling Light Pollution and Reducing Lighting Energy Consumption".

Reason: To protect the amenity of the immediate area, prevent the creation of nuisance due to light pollution and to support the reduction of energy consumption.

NOTE TO APPLICANT

- Following expiry of the permission the land to which it relates reverts to its previous (Class 9 – single dwellinghouse) lawful use. Enquiry should be made with the Planning Authority in the event that there is any doubt as to the lawful status of the land.
- The applicant notes in the supporting documentation that some aspects of waste are currently managed on an ad-hoc basis, with some wastes e.g. food, being used inappropriately. In formulating the Risk Management Plan pursuant to the requirements of condition no. 5 above, the applicant shall ensure that all waste is handled and disposed in accordance with local regulation and that food waste is disposed in accordance with the Management Plan, and not used to feed the birds.
- The Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Act 2021: The aforementioned Act brings activities such as wildlife rescue centre under the licensing regime for the first time. The Act is designed to increase the welfare standards for numerous animal centric activities and places strict controls on areas such as infection control, welfare and space. The Act comes into force on 1st September 2021. The applicant should have regard to the requirements of this Act and the subsequent guidance and apply for licensing in due course.
- Design and Construction of Buildings – Gulls: It is very strongly recommended that appropriate measures be taken in the design of buildings and their construction to inhibit the nesting and roosting of gulls. Such measures are intended to reduce nuisance to, and intimidation of, persons living, working and visiting the development.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/00514/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The site is located within the Development Management Settlement Zone for the Main/Key Settlement of Dunoon as identified in the Argyll and Bute Local Development Plan 2015 (LDP) wherein Policy LDP DM1 (A) gives encouragement in principle to up to and including large scale, sustainable forms of development on appropriate sites.

B. Location, Nature and Design of Proposed Development

The application site, measuring some 370m² in area, comprises a residential dwellinghouse and its associated curtilage located within an established residential cul-de-sac on the northern edge of the town of Dunoon.

The site fronts onto an unclassified adopted road known as Lochan Avenue, a residential cul-de-sac street. The dwellinghouse is a medium-sized, 3-bedroom detached bungalow of modern design. A driveway off of Lochan Avenue runs along one side of the bungalow giving access to a detached single garage in the rear curtilage. The driveway has space for 3 no. cars parked in a tandem (nose-to-tail) arrangement. There are similar bungalows directly adjoining to either side of the application property (and along either side of Lochan Avenue.) The rear of the property is bounded by woodland. The site slopes upwards from front to back.

The proposal is for a temporary change of use of the property from dwellinghouse (Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 to a wildlife rescue facility. The property will continue to be the applicant's principal place of residence. The proposed use is 'sui generis' (with reference to the Use Classes Order.)

The use relates to the treatment, rehabilitation and release of sick, injured and orphaned wildlife. Numbers and wildlife species can fluctuate depending on seasonal changes and the type of wildlife received. However, average numbers at any one time typically range from 70-100 animals/birds. Approximately 500 animals/birds are treated annually. The rescue facility currently operates 5 full-time and 10+ part-time volunteers. Approximately 5-7 volunteers attend the site daily in a staggered shift pattern typically limited to within the hours of 9am-6pm (with occasional exceptions justified by emergencies.)

The application submission acknowledges that the aims and objectives for the charity are bigger than this site allows and that the facility is currently limited by the nature of the property. The application submission states that the wildlife rescue is currently working towards securing a site to build a purpose-built rescue centre to meet the demands for the service from the community and the aims of the charity. On this basis, the applicant has submitted this application for a temporary change of use to allow the facility to function at its current level whilst an alternative site is procured.

The majority of animals/birds are housed within the bungalow, principally within the open-plan living dining area with limited overspill capacity in the kitchen. Treatment takes place within this living room/dining space. Bedding materials, food, carrying compartments, records etc are principally stored in the hallway and one of the original

3 no. bedrooms. Another bedroom has been cleared for use as a 'flight room' for recovering birds. The third bedroom is used as such by the proprietor/manager of the wildlife rescue. The detached garage in the rear curtilage is used for general storage and additionally contains several large freezer chests. The applicant indicates that the garage is also occasionally used to temporarily house animals in a quarantine type set up.

The flat roof of the single garage cantilevers outwards to one side to provide a canopy, beneath which is a pet/residential aviary that currently houses a falcon. It is understood that the falcon is a 'permanent resident' retained by the applicant as it cannot be re-introduced to the wild. There are two pens located on the paved patio immediately to the rear of the bungalow. Both are timber framed construction with timber panel/mesh walls with flat or mono-pitched roofs. They have an approximate footprint of 6.3m² and 7.5m² and height of approximately 2.1m rising to 2.8m at the highest edge of the mono-pitched roof. One of these pens houses another permanent resident bird which also cannot be re-introduced to the wild by reason of its original injury. A retaining wall separates the rear terrace area from the rest of the rear garden which slopes upwards towards the woodland at the rear of the property. This rear area is occupied by a further five pens of varying shapes and sizes mostly located around the rear and side perimeters of the garden with the exception of a relatively large (12.4m²) pen/aviary sited in the centre of the space. This latter pen is 2.0m high and constructed with a metal pole framework with wire mesh enclosure. The remaining pens are timber and mesh construction ranging from 2.1m² footprint with 800mm height to 12.6m² with 2.80m height. The paved terrace area and the upper part of the driveway in front of the garage is used for external storage of a number plastic wheelie-type bins, assorted plastic storage bins and containers, animal transportation cases, and general materials for construction/maintenance of pens etc. During 2 no. visits to the property, it was noted that there were several metal-framed, mesh panels stored leaning up against the gable end of the bungalow adjacent to the side boundary shared with no. 18. In addition there are 4 no. rabbit hutch type enclosures, a couple of plastic bins, and a small stack of flat timber panels and a roll of mesh for construction of pens stored in the front garden along the front wall of the bungalow. The pens were not occupied at the time of the site inspections.

It may be helpful to set out a brief planning history relating to the development of the current use for wildlife rescue in order to provide background to the application proposal and this assessment.

- 25.02.2018 - The original complaint in respect of an alleged unauthorised use of no. 19 Lochan Avenue was received by the planning authority.
- 26.02.2018 - The complaint was subsequently acknowledged and registered as a new planning enforcement investigation ref: 18/00042/ENOTH1. Assessment of whether a material change in use has taken place is a matter of fact and degree. The initial assessment made by the investigating officer was that a breach of planning control had not occurred at that time based on observations of the level of activity related to wildlife rescue and the associated information available at that time, however officers kept the investigation open for periodic monitoring.
- 05.04.2019 – The planning authority served a Notice Requiring Application for Planning Permission for Development Already Carried Out under s33A of the Town and Country Planning (Scotland) Act 1997. This notice formalised the position that a breach of planning control had occurred and instructed the proprietor to either cease the unauthorised use, or to submit a planning application seeking retrospective consent within a period of 4

weeks. This followed a period during which the status of the ongoing investigation and information gathered was reviewed, culminating in officers taking the view that planning permission was required as it was considered that a material change of use had occurred. During the period 26.02.2018-05.04.2019, officers applied discretion regarding the timescale for the submission of an application for planning permission to allow an opportunity for the proprietor to conclude a number of then current options for relocation of the wildlife rescue to an alternative location. The investigating team was actively engaged in discussions with the proprietor during that period with regard to relocation.

- 26.07.2019 - An Enforcement Notice was served after expiry of the time period for submission of a planning application set out in the s33A Notice (above.) This notice took effect on 26th August 2019 prescribing a 3 month period expiring 26th November 2019 within which the unauthorised use was to cease.
- 11.12.2019 – The investigating officer visited the property following expiry of the compliance period. It was confirmed that the unauthorised use had not ceased. There followed a period where officers carried out a wide-ranging investigation and assessment into the various options and expediency of progressing enforcement action. Ongoing work streams relating to identification and progression of appropriate enforcement action was unexpectedly interrupted by the impact of Covid-19 which resulted in the closure of Council offices on 23rd March 2020. Consequent working limitations severely frustrated the finalisation of proposals for direct action.
- 10.03.2021 – The current application for planning permission for a temporary change of use from a dwellinghouse to animal rescue was received by the planning authority. This application was submitted following ongoing correspondence between planning officers and the proprietor of the wildlife centre in the context of the outstanding enforcement notices in the absence of an application for planning permission to regularise the unauthorised change of use.

C. Impact on Residential Character/Amenity and Health and Safety

It is considered that impact on local residential amenity with reference to noise, smell, general disturbance and potential risk to health, in relation to the otherwise homogeneous residential character of this immediate local area is the principal land-based planning issue related to this proposal followed by highways and parking issues. This is borne out by the volume and nature of the objections, many of which are from residents of houses on the same street.

The nature of the proposed development falls within the definition of Bad Neighbour Development as defined in Schedule 7 of the the Town and Country Planning (General Development Procedure (Scotland) Order 1992, as such the proposal requires to be considered against policies LDP 8 and Policy SG LDP BAD 1. Development will only be permitted where it is demonstrated that the proposal will not adversely affect residential amenity or cause unacceptable roads issues. Policy 14 – Bad Neighbour Development of the Proposed LDP2 has not been objected to and carries significant weight in the determination of this application. This has a similar policy approach to adopted policy SG LDP BAD 1.

The strength of concern expressed is acknowledged. The objections present a very negative and intrusive impression of impact upon residential amenities. Site assessments by various planning officers did not reveal any material impacts on residential amenity in relation to noise, smell, general disturbance, hygiene or hazards

to health. It is also acknowledged that photographs have been submitted showing site conditions at a given period that do give rise to concerns.

Council Environmental Services have also investigated nuisance complaints in relation to the wildlife rescue centre. However, to date site assessments have failed to identify material harm. The Council's Environmental Services consultation response in relation to this planning application raises no objections to the proposal on amenity/health grounds, subject to specified conditions in order to protect amenity. Environmental Health has since assessed a Risk Management Plan submitted by the applicant and has advised that the Plan is competent in terms of measures to mitigate general identifiable risk, but with the caveat that this is a 'working' document that will require to be adapted and revised a part of the ongoing operation of the wildlife rescue according to specific categories of risk.

Whereas, there have been strongly-felt concerns regarding vermin infestation directly resulting from the animal welfare centre this is disputed by the applicant and there is no evidence of a link between the use and any increase in rats or insects.

In conclusion, whilst the concerns of local residents are acknowledged, there is no direct or robust evidence of undue detriment to residential amenity. As such it is considered that, subject to the recommended planning conditions, the proposed use can operate without undue detrimental impact upon local residential amenity, consistent with the provisions of Policy LDP 8 and SG LDP BAD 1.

D. Natural Environment

The site is limited to a dwellinghouse and its associated curtilage. The proposed built development comprises a series of pens erected within the rear garden and the use itself. The proposal will therefore have no direct, or indirect impact upon the natural environment.

E. Built Environment/Impact on Visual Amenity

The localised built development pattern comprises a row of detached bungalows fronting onto either side of a residential cul-de-sac road. The bungalows are uniformly set back from the road, and gaps between built development are relatively small, resulting in a regular 'building' line behind front gardens which are generally open plan with an absence of walls and fences, however many have established landscape planting. The properties on the eastern (up-hill) side of the road (as the application site is) have a retaining wall at the front which raises the level of the front gardens a couple of feet above the pavement. The houses on the western side of the road are at a lower level relative to the road. Materials are predominantly muted render walls with some timber clad panels with a brick or stone plinth/underbuild. Roofs are predominantly concrete tile.

The significant majority of pens and general storage associated with the animal rescue use is restricted to the rear curtilage. Whilst the various structures and storage could be described as utilitarian and of a rather haphazard construction and appearance, these features are almost completely screened from public view by the houses and the garage. They are screened in views from the rear by reason of being on a lower slope and the bordering woodland. Views of the pens within the rear curtilage are almost completely limited to views from within the site. Whilst there may be several cages visible behind the window to the living room, it is noted that this is not exclusive to the

use for animal rescue and features within the interior of a house, viewed through a window, do not have a significant impact upon the visual amenities of this residential street. It is acknowledged that there are several hutch type enclosures; a couple of plastic bins; and a stack of materials for pens, stored up against the front wall of the house at the time of the planning officers two visits to the property. These animal enclosures are modest in scale in number, not particularly out of keeping with pet enclosures typically found in residential curtilages and were neatly stored against the front wall of the house in an ordered fashion. The pile of materials was relatively modest, stored flat in an ordered and tidy fashion and screened to an extent by natural planting along the front boundary. It is noted that several other front gardens in the street have a level of domestic-related paraphernalia that is not dissimilar to the application property in terms of scale or appearance. It is also noted that some level of equipment or features within front gardens is typical of residential streets. On the basis of site inspections, the planning authority is satisfied that the scale and nature of several animal hutches and a temporary stack of timber panels and mesh within the front curtilage is not out of keeping with the residential character of the area and that the visual amenities of the area are adequately preserved in accordance with the provisions of policy LDP 9 and SG LDP – Sustainable Siting and Design Principles. The pens in the rear curtilage, by reason of discreet siting and scale are largely, if not completely, screened from public viewpoints and as such do not impact upon the visual amenities of the area.

The planning authority acknowledges that this assessment is to a large extent based on two recent site inspections, and the observations of officers who have previously visited the site in relation to the ongoing enforcement matter since 2018. It is further acknowledged that objectors have stated that the level of visual intrusion is often more significant than at present, and that the site has been significantly tidied since submission of the application. However, the planning authority is satisfied on the basis of the current site conditions, with particular reference to the front curtilage, that the application property is not visually incongruous within its setting and that the rescue facility can be operated without visual detriment to visual amenity and character.

Over the course of visiting the site the structures in the rear curtilage have been subject to change either in terms of numbers, type or placement. This is partly reflective of changing demands and the needs of different animals. Given this situation it is considered that, in the interests of residential amenity, it is appropriate to attach conditions limiting the use of the front garden in terms of structures and restricting the scale of structures in the rear curtilage to the same level allowed by the domestic permitted development rights that would apply to adjacent residential properties.

F. Landscape Character

The site is limited to a residential property within an established enclave of residential development. Built development is small scale in relation to the surrounding landscape and additionally, is screened by woodland which borders the rear of the site. As such, the proposal does not impact upon landscape character.

G. Road Network, Parking and Associated Transport Matters.

The road regime serving the application site is made up of the residential cul-de-sac of Lochan Avenue which has a sole point of vehicular access off of the north western end of Ardenslate Road, relatively close to the junction of the latter 'distributor' road with A885 Sandbank Road. Lochan Avenue has a 'hammerhead' type turning area at either

end serving some 35 no. dwellinghouses, many of them detached bungalow style houses with off street parking in the form of a private driveway (similar to the application property.) On street parking in the immediate vicinity of the application site is unrestricted. Lochan Avenue is relatively narrow but with footpaths either side and adequate width for vehicles to pass in either direction (subject to on-street parking).

The application submission advises that the driveway to no. 19 provides private off-street parking for 3 no. vehicles. Shift patterns mean that 6 volunteers typically attend the site on a daily basis between 9am-6pm, sometimes, but not always at the same time. Of the six, three volunteers typically bring cars which are parked during their shift. It is submitted by the applicant that the scale and nature of deliveries are no different to other family houses on the street. Callers are encouraged to bring rescue animals to the application property during daytime hours where individuals are able to safely contain and transport the animals. Newspaper and food donations are also encouraged to be dropped off at the property. Waste is privately collected every two days. The volume of traffic therefore appears to fluctuate however a typical pattern appears to be typically four full-time/volunteer staff cars; plus refuse collection on every other day; courier van deliveries, and car movements associated with individuals dropping off rescue animals and food/newspaper donations. It is submitted that there has never been a problem finding a parking space nor any problems with neighbours regarding traffic/parking issues (with the exception of one neighbour who has taken issue with where the occupier of no.19 parked one car and that this pre-date the animal rescue use.)

On the otherhand objections (many of which are from residents in the street) state that the animal rescue use generates a level and nature of traffic movements and parking demand that is out of keeping with traffic volumes and patterns typically associated with the use of the property as a dwellinghouse. Furthermore, concern is expressed that additional traffic generated results in localised congestion and road safety hazards e.g. to children using the street. It is alleged that inconsiderate parking and uncooperative attitudes have created uncooperative and aggressive conflicts towards residents.

The issue of the capacity of the local road regime to accommodate any additional traffic generated by the use without causing congestion or road hazards; and adequate car-parking appropriate to the use are material considerations. However, these fall to be assessed with reference to a technically robust assessment based on adopted standards. It must be clear that it is not the role of the planning authority to seek to arbitrate between conflicting allegations of a personal nature or of inconsiderate or aggressive behaviour resulting from parking.

The Area Roads Engineer consultation response does not raise any concerns regarding the capacity of the local road regime to accommodate the nature and volumes of traffic that are directly generated as a result of the use applied for. As such, it is considered that the proposal complies with policy LDP 11 and SG LDP TRAN 4.

The Area Roads Engineer has assessed this proposal as having a requirement for a total of 3 no. on-site car parking spaces. This is on the basis of an assessment for 1 no. space for the manager/assistant manager of the wildlife rescue of the plus an additional 2 no. spaces for up-to six persons engaged in the wildlife rescue centre. The site can provide 3 no. off-street car parking spaces. On this basis, the Area Roads consultation has not identified a shortfall in on-site parking provision as assessed against Council guidance on parking provision.

The Area Roads Engineer originally assessed a shortfall of one parking space and recommended that determination of the application be deferred. This original assessment was based on a combined total of parking spaces for use of the application property as a 3 bedroom dwellinghouse and an animal welfare centre. The applicant has responded to the effect that the proposal is not for use as both a 3 bedroom house and wildlife rescue, but solely as a wildlife rescue centre that has an element of residential accommodation for on-site care and supervision that is ancillary to the primary use of the planning unit as an animal welfare centre, and that is not appropriate to require parking in effect for two uses. It is acknowledged that the application is clearly for change of use from a house to an animal welfare centre, and inspection bears out the submission that the scale and nature of the remaining residential use is ancillary to the wildlife rescue use. An assessment, with regard to parking requirements, based on the use of the property as a wildlife rescue centre with ancillary staff accommodation is therefore appropriate.

On this basis, it is considered that the parking demand generated by the proposal can be accommodated on site in accordance with the provisions of policy LDP 11 and SG TRAN 6.



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ARGYLL AND BUTE COUNCIL
PROCEDURE NOTE FOR USE AT
VIRTUAL DISCRETIONARY HEARING

HELD BY THE PLANNING, PROTECTIVE SERVICES & LICENSING COMMITTEE

1. Argyll and Bute Council have determined the need to hold virtual Discretionary Hearings. This procedural note has been drafted to support these meetings.
2. Virtual meetings are those that will **not** involve a physical location. However should circumstances dictate, the Chair and (if appropriate) Vice Chair along with relevant officers will be located in a single venue.
3. The Executive Director with responsibility for Legal and Regulatory Support will notify the applicant, all representees, supporters 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. Details on how interested parties can access the meeting will be referenced within the same notification.
4. While reasonable efforts will be made to ensure all interested parties can attend the virtual Discretionary Hearing on request, there may be exceptional circumstances, given technological capacity, which may limit the numbers attending. Should this situation arise we will ensure priority access to the meeting will be given to those who have notified of their intention to present to the Committee (e.g. applicant, Planning Authority, statutory consultees and spokespersons of objectors/supporters). Thereafter, invites will be issued to other interested parties until the limit of the meeting is reached.
5. On receipt of the notification the applicant, all representees, including supporters and objectors will be 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. Parties who wish to speak at the meeting shall notify Argyll and Bute Council no less than 2 working Days (excluding public holidays and weekends) prior to the start of the meeting. This is to facilitate remote access (see note 1) and the good conduct of the meeting.
6. The Executive Director with responsibility for Legal and Regulatory Support will give a minimum of 7 days' notice of the date and time for the proposed Hearing to all parties.

Ref: ABH1/2009

7. The hearing will proceed in the following order and as follows.
8. The Chair will introduce the Members of the Committee, confirm the parties present who have indicated their wish to speak and outline the procedure which will be followed. It is therefore imperative that those parties intending to speak join the meeting at its commencement.
9. The Executive Director with responsibility for Development and Economic Growth's representative will present their report and recommendations to the Committee.
10. 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.
11. The consultees, supporters and objectors in that order (see note 1), will be given the opportunity to state their case to the Committee.
12. 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 cause shown the Committee may extend the time for a presentation by any of the parties at their sole discretion.
13. Members of the Committee only will have the opportunity to put questions to the Executive Director with responsibility for Development and Economic Growth's representative, the applicant, the consultees, the supporters and the objectors.
14. At the conclusion of the question session the Executive Director with responsibility for Development and Economic Growth'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.
15. If at any stage it appears to the Chair that any of the parties is speaking for an excessive length of time he/she will be entitled to invite them to conclude their presentation forthwith. (see note 3)
16. The Chair will ascertain from the parties present that they have had a reasonable opportunity to state their case.
17. The Committee will then debate the merits of the application and will reach a decision on it. No new information can be introduced after the Committee begins to debate.
18. The Chair or the Governance Officer on his/her behalf will announce the decision.

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19. A summary of the proceedings will be recorded by the Committee Services Officer.

NOTE

- (1) If you wish to speak at the hearing you will require to notify the Committee Services Officer no less than 2 working Days (excluding public holidays and weekends) prior to the start of the meeting. This is to facilitate remote access and the good conduct of the meeting.

In the event that a party wishes to speak to a visual presentation, this requires to be sent to Committee Services no less than 2 working days (excluding public holidays and weekends) before the commencement of the Hearing; this will not be shared with other parties prior to the meeting but will ensure its availability for the commencement of the Hearing. The slides that are visible, at any point during the presentation, will be determined by the spokesperson(s). Should, for any reason, this not be possible the Committee Services Officer will control the slides under explicit instruction from the spokesperson(s), it would therefore be helpful if the slides were individually numbered. It would also be helpful if the file size of the presentations is kept to a minimum to mitigate against any potential IT issues – guidance can be provided if required.

If it is your intention to join the hearing to observe the proceedings, please advise the Committee Services Officer no less than 2 working Days (excluding public holidays and weekends) prior to the start of the meeting to facilitate remote access.

- (2) Councillors (other than those on the Committee) who have made written representations and who wish to speak at the hearing will do so under note 1 above according to their representations but will be heard by the Committee individually.
- (3) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing. For the avoidance of doubt the time allocated will be per party and will include for example all supporters/objectors in the half hour slot except where additional time is agreed by the Chair.

The representative of the Executive Director with responsibility for Development and Economic Growth – 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 Committee and this is best achieved when people with similar views co-operate in making their submissions.
- (5) 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 subject to the requirements for notice herein.
- (6) Should, for any reason, Members of the Committee lose connection or have any technical issues during the meeting, they will be asked to contact the Governance or Committee Support officer, if possible, by email or instant message. A short adjournment may be taken to try and resolve the connection. If the Members of the Committee are unable to re-join the meeting and a quorum still exists then the meeting will continue to proceed. If a quorum does not exist the meeting will require to be adjourned. For the avoidance of doubt Members of the Committee have to be present for the whole hearing in order to take part in the decision.
- (7) Should, for any reason, participants in the hearing lose connection or have any technical issues during the meeting, a short adjournment may be taken to try and resolve the connection. In the event the connection cannot be restored within a reasonable timeframe consideration will be given to the continuation of the meeting.
- (8) Members of the Committee will use the instant message box function to indicate to the Chair when they wish to speak to ask a question or make a comment. This function will be monitored by the Chair and by governance staff in attendance. The instant message box should not be used by any other party in attendance. For the avoidance of doubt any comment made using this function other than by Members of the Committee will be disregarded. Misuse of the messaging facility by any attendee could result in that person being removed from the meeting by the Chair.
- (9) Where a Councillor who is a member of the PPSL has made or wishes to make a representation (on behalf of any party) during the meeting in relation to the application under consideration, they should make their position clear to the Chair and declare an interest. Having done so, they may, at the appropriate time, make the relevant representation and then must retire fully from the meeting room prior to deliberation of the matter commencing. A Councillor, not a member of the PPSL, may make a representation (on behalf of any party) during the meeting in relation to the application then must retire fully from the meeting room prior to deliberation of the matter commencing.
- (10) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support

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the recommendation from the Executive Director with responsibility for Development and Economic Growth which is attached hereto.

I:data/typing/virtual planning hearings/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. Expenses may be awarded against unsuccessful parties, or on the basis of one party acting in an unreasonable manner, in appeal/review proceedings.
- 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 from policy, 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 as contained within Planning Circular 3/2013: Development management procedures on the definition of a material planning consideration is attached herewith However, interested parties should always seek their own advice on matters relating to legal or

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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

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- 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.

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