

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Customer Services
Executive Director: Douglas Hendry



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7 October 2010

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **MAIN HALL, BUNESSAN COMMUNITY CENTRE, BUNESSAN, ISLE OF MULL** on **FRIDAY, 15 OCTOBER 2010** at **11:00 AM**, which you are requested to attend.

Douglas Hendry
Executive Director - Customer Services

BUSINESS

- 1. APOLOGIES FOR ABSENCE**
- 2. DECLARATIONS OF INTEREST (IF ANY)**
- 3. ROSS OF MULL RENEWABLE ENERGY LTD: APPLICATION FOR ERECTION OF ONE 15 METRE HIGH (HUB) 15 KILOWATT TURBINE: LAND SOUTHWEST OF HILLPARK, ARDTUN, BUNESSAN, ISLE OF MULL (REF: 09/01157/PP)**
Report by Head of Planning and Regulatory Services (Pages 1 - 16)

COPY OF PROCEDURE NOTE (Pages 17 – 22)

PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE

Councillor Rory Colville
Councillor Vivien Dance
Councillor Daniel Kelly
Councillor Neil Mackay
Councillor Bruce Marshall
Councillor Roderick McCuish
Councillor James McQueen

Councillor Robin Currie
Councillor Mary-Jean Devon
Councillor David Kinniburgh
Councillor Donald MacMillan
Councillor Alister McAlister
Councillor Alex McNaughton
Councillor Al Reay

Contact: Melissa Stewart

Tel. No. 01546 604331

**Argyll and Bute Council
Development Services**

Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 09/01157/PP

Planning Hierarchy: Local Development

Applicant: Ross of Mull Renewable Energy Ltd

Proposal: Erection of 1 No. 15 metre high (hub) 15 kilowatt turbine

Site Address: Land Southwest of Hillpark, Ardtun, Bunessan, Isle of Mull

DECISION ROUTE**Local Government Scotland Act 1973**

(A) THE APPLICATION**(i) Development Requiring Express Planning Permission**

- Erection of 1 No. 15 metre high (hub) 15 kilowatt wind turbine
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that:

planning permission be granted subject to the conditions and reasons set out in this report

(C) HISTORY:

No relevant history.

(D) CONSULTATIONS:Area Roads Manager

Report dated 14/09/09 advising no objection subject to conditions.

Public Protection Unit

Memo dated 16/03/10 advising that the noise levels likely to be produced by the turbine at the dwellinghouse it is intended to serve is likely to be above typical local background

noise levels and therefore will be audible to the occupants of the property. They further advised that it is highly possible that the operational noise levels will lead to loss of amenity for the residents in this property. However, as the turbine is intended to serve the dwellinghouse it is situated adjacent to, and no representation has been received from the residents of the dwellinghouse the turbine is intended to serve, the Public Protection Unit raised no objections.

Scottish Natural Heritage

Letter dated 02/11/09 advising no objection to the proposal but offering the following comments. The development in association with the other sites proposed is likely to have locally significant effects upon a wild and rugged area sensitive to change where any built development must be carefully sited. Appropriate siting should be assessed in terms of the likely landscape and visual impacts upon key views, and the cumulative impact of multiple proposals, especially in terms of sequential views along the important tourist route to Iona.

Royal Society for Protection of Birds (RSPB)

Letter dated 12/10/09 advising no objection to the proposal.

National Air Traffic Systems

Letter dated 29/09/09 advising no objection to the proposal.

Mull Community Council

Letter dated 19/10/09 objecting to the proposal on the grounds of potentially adverse effects upon the community, landscape and tourism.

(E) PUBLICITY:

N/A

(F) REPRESENTATIONS:

17 representations have been received regarding the proposed development.

Fiona Brown, Tigh Na H'Abhann, Kinloch, Pennyghael, Isle of Mull, PA70 6HB

Janna & David Greenhalgh, Rehmor Croft, Bunessan, Isle of Mull, PA76 6DL

Mrs Jan Sutch Pickard, 3 The Village, Bunessan, Isle of Mull, PA67 6DG

Carol Marshall & Michael Wagemakers, Caol Ithe, Fionnphort, Isle of Mull, PA66 6BL

Janet & Alan Schofield, Fraoch Cottage, Fionnphort, Isle of Mull, PA66 6BL

Ron & Shirley Blacoe, Quarry Cottage, Fountainhead, Bunessan, Isle of Mull, PA67 6DP

Gillian Cummins & Alison Holmes, Staffa House, Fionnphort, Isle of Mull, PA66 6BL

Susan Clare, The Hill House, Kilpatrick, Isle of Mull, PA70 6HF

TRH Dawson, Maolbhuidhe, Fionnphort Isle of Mull, PA66 6BP

Dr Anita Tunstall, Faolainn, Ardtun, Bunessan, Isle of Mull, PA67 7DH

Alan & Joanna Gardner, Kinloch Steadings, Pennyghael Isle Of Mull, PA70 6HB

Tony Jeffree, 11A Poplar Grove, Sale, Cheshire, M33 3AX

Brian Thomas, Druim Thaoslainn, Bunessan, Isle of Mull, PA67 6DL

Dr Susan K Reed, Taigh Aig An Oir, Ardtun, Isle of Mull, PA67 6DH

John Clare, The Hill House, Kilpatrick, Isle of Mull, PA70 6HF

Councillor Gordon Chalmers, Brockville, Raeric Road, Tobermory, Isle of Mull

Mrs C Lamont, Fionnphort, Isle of Mull, PA66 6BL

(i) Summary of issues raised

- All the applications should constitute one development and should be dealt with as a whole.

Comment: Each individual planning application has to be considered on its own merits. However, the cumulative impact of a number of proposals is a consideration and is addressed in Appendix A of this report.

- The proposal requires to be assessed in terms of Policy LP REN 1 and all the relevant criteria contained with section A of this policy.

Comment: This is addressed in Appendix A of this report.

- There appears to have been no Environmental Impact Assessment carried out for the application.

Comment: In view of its limited scale (below the threshold identified in Schedule 2 of the EIA Regulations), the proposal does not require to be accompanied by an Environmental Impact Assessment.

- There has been no information submitted showing the relationship between all of the applications and their cumulative impact on the wider area.

Comment: This is addressed in Appendix A of this report.

- The proposal should only be undertaken following extensive public consultation to consider the impact upon the environment, economic activity of the area, ability of the existing infrastructure and relationship to other potential community based renewable energy schemes.

Comment: As a 'minor' application in the statutory planning hierarchy, the proposal does not require to be the subject of any mandatory Pre Application Consultation (PAC).

- Such developments should be undertaken within a framework that is designed around the needs of the local community rather than the needs of commercial exploitation.

Comment: There is no requirement in planning legislation for such a framework.

- The landscape/open space/biodiversity assessment is inadequate and clarification is sought on who carried out the assessment and what their qualifications are.

Comment: This is noted.

- The local community will gain little or no benefit from the proposal.

Comment: There is not a requirement to demonstrate community benefit in support of this proposal.

- A development of this size will use up all capacity within the grid with regards to resale of electricity and prevent further similar development by local householders, businesses or community initiatives.

Comment: Grid capacity issues are not material planning considerations.

- The proposal will have an adverse impact on a visually scenic area and dominate an important tourist route.

Comment: This is addressed in Appendix A of this report.

- The proposal will have an adverse impact on the setting of the historic island of Iona and the Scheduled Ancient Monument of Iona Abbey.

Comment: This is addressed in Appendix A of this report.

- The proposal will result in the endangerment of birdlife in the area.

Comment: The Royal Society for Protection of Birds (RSPB) has been consulted on the proposal and neither they nor SHN have raised objections on ornithological grounds.

- The proposal will result in an unacceptable level of shadow flicker which would be hazardous to both nearby residents and road users.

Comment: The Council's Public Protection Unit and Area Roads Manager were consulted on the proposal and have raised no concerns regarding shadow flicker.

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

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | |
|---|-----------|
| (i) Environmental Statement: | No |
| (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |

| | | |
|-------|--|----|
| (iii) | A design or design/access statement: | No |
| (iv) | A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |
| <hr/> | | |
| (H) | PLANNING OBLIGATIONS | |
| (i) | Is a Section 75 agreement required: | No |
| <hr/> | | |
| (I) | Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: | No |
| <hr/> | | |
| (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. | |
| | <u>Argyll and Bute Structure Plan 2002</u> | |
| | <i>STRAT DC 4 – Development in Rural Opportunity Areas</i> | |
| | <i>STRAT DC 8 – Landscape and Development Control</i> | |
| | <i>STRAT RE 1 – Wind Farm/Wind Turbine Development</i> | |
| | <u>Argyll and Bute Local Plan 2009</u> | |
| | <i>LP ENV 1 – Impact on the General Environment</i> | |
| | <i>LP ENV 10 – Impact on Areas of Panoramic Quality (APQs)</i> | |
| | <i>LP REN 2 – On Site Commercial and Domestic Wind Turbines</i> | |
| | Appendix A – Sustainable Siting and Design Principles | |
| (ii) | List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009. | |
| | The Town & Country Planning Act (Scotland) 1997 | |
| | The Planning etc. (Scotland) Act, 2006 | |
| | SPP, Scottish Planning Policy, 2010 | |
| | Planning Advice Note 45 : Renewable Energy Technologies | |

(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 (PAN41 or other): No

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

Planning permission is sought for erection of 1 No. 15 metre high 15 kilowatt wind turbine on an area of land to the southwest of Hillpark, Ardtun, Bunessan, Isle of Mull.

The turbine measures 15 metres from base to hub and has three blades each measuring 4.5 metres in length with a diameter of 9 metres. The overall height of the turbine is 19 metres.

In terms of the adopted Argyll and Bute Local Plan, the site is situated within a Rural Opportunity Area within which Policy STRAT DC 4 of the approved Argyll and Bute Structure Plan gives encouragement to small scale developments on suitable sites which, in terms of siting and design, will visually integrate with the landscape and settlement pattern.

Policy REN 2, On Site Commercial and Domestic Wind Turbines, states that on site commercial and domestic wind turbines will be supported in forms, scales and sites where the technology can operate efficiently, the development is located as close to the premises which it is intended to serve as is safely and technically possible, servicing and access implications are acceptable, and subject to specific proposals satisfactorily addressing all other material considerations.

It must be demonstrated that the proposed development will not have an unacceptable adverse impact directly, indirectly or cumulatively on the following criteria:

- areas and interests of nature conservation (including local biodiversity, ecology and the water environment)
- highly valued landscapes including Gardens and Designed Landscapes
- sites of historic or archaeological interest and their settings
- settlement character including conservation areas
- visual, residential and general amenity
- telecommunications, transmitting or receiving equipment

The site is also situated within the Ross of Mull Area of Panoramic Quality within which Policy LP ENV 10, Impact on Areas of Panoramic Quality states that development in, or adjacent to, an Area of Panoramic Quality will be resisted where its scale, location or design will have a significant adverse impact on the character of the landscape.

Appendix A of the adopted Argyll and Bute Local Plan states that the impact on the landscape is a major consideration when new development is proposed and all significant developments require to be assessed for their compatibility with the present landscape character as detailed in the SNH Landscape Character Assessment.

It is considered that the applicant has demonstrated that the proposed wind turbine is sited as close to the premises it is intended to serve as is safely and technically possible and therefore there is an appropriate association between the two. Furthermore, when viewed in relation to the existing dwellinghouse, nearby electricity sub-station and topography of the area surrounding the site, it is not considered that the turbine will have a significant adverse impact on the area and wider landscape.

Having regard to all of the above, it is considered that the proposed wind turbine is acceptable and conforms to the development plan and therefore I have no objection to planning permission being granted subject to the conditions appended to this report.

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

(R) Reasons why planning permission should be granted:

It is considered that the applicant has demonstrated that the proposed wind turbine is sited as close to the premises it is intended to serve as is safely and technically possible and therefore there is an appropriate association between the two.

Furthermore, it is considered that the proposed turbine, when viewed in relation to the existing dwellinghouse, sub-station, natural backdropping afforded from the topography, it will not have a significant detrimental impact on the surrounding landscape or the wider Area of Panoramic Quality.

Having due regard to the above, the proposal is considered to accord with Policies STRAT DC 4 and STRAT DC 8 of the approved Argyll and Bute Structure Plan and Policies LP ENV 1, LP ENV 10 and LP REN 2 of the adopted Argyll and Bute Local Plan and there are no other material considerations, including issues raised by third parties, which would warrant anything other than the application being determined in accordance with the provisions of the development plan.

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

N/A

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

Author of Report: Fiona Scott Date: 16/03/10
Reviewing Officer: Richard Kerr Date: 17/03/10

Angus Gilmour
Head of Planning

CONDITIONS AND REASONS RELATIVE TO APPLICATION REFERENCE 09/01157/PP

1. That the development to which this permission relates must be begun within three years from the date of this permission.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended).

2. Upon the permanent cessation of the use of the wind turbine, or in the event of electricity not having been generated for a continuous period in excess of six months, the turbine and any ancillary equipment shall be dismantled and removed from the site and the land reinstated in accordance with details to be submitted and approved in writing by the Planning Authority.

Reason: In the interests of visual amenity on the basis of ensuring that the structure does not remain on the site beyond the period during which it is required for the purposes of electricity generation. .

NOTE TO APPLICANT

- In order to comply with Section 27A(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 (as amended) it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 09/01157/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

In terms of the adopted Argyll and Bute Local Plan, the site is situated within a Rural Opportunity Area within which Policy STRAT DC 4 of the approved Argyll and Bute Structure Plan gives encouragement to small scale developments on suitable sites which, in terms of siting and design, will visually integrate with the landscape and settlement pattern.

Policy REN 2, On Site Commercial and Domestic Wind Turbines, states that on site commercial and domestic wind turbines will be supported in forms, scales and sites where the technology can operate efficiently, the development is located as close to the premises which it is intended to serve as is safely and technically possible, servicing and access implications are acceptable, and subject to specific proposals satisfactorily addressing all other material considerations.

It must be demonstrated that the proposed development will not have an unacceptable adverse impact directly, indirectly or cumulatively on the following criteria:

- areas and interests of nature conservation (including local biodiversity, ecology and the water environment)
- highly valued landscapes including Gardens and Designed Landscapes
- sites of historic or archaeological interest and their settings
- settlement character including conservation areas
- visual, residential and general amenity
- telecommunications, transmitting or receiving equipment

The site is also situated within the Ross of Mull Area of Panoramic Quality within which Policy LP ENV 10, Impact on Areas of Panoramic Quality states that development in, or adjacent to, an Area of Panoramic Quality will be resisted where its scale, location or design will have a significant adverse impact on the character of the landscape.

Appendix A of the adopted Argyll and Bute Local Plan states that the impact on the landscape is a major consideration when new development is proposed and all significant developments require to be assessed for their compatibility with the present landscape character as detailed in the SNH Landscape Character Assessment.

B. Location, Nature and Design of Proposed Development

The site for the turbine is situated to the southwest of Hillpark, Ardtun, Isle of Mull, the dwellinghouse it is proposed to serve.

The site is adjacent to a small area of trees and an electrical sub-station to the west and is backdropped by a small hill to the south which will help integrate it into the landscape.

The turbine measures 15 metres from base to hub and has three blades each measuring 4.5 metres in length with a diameter of 9 metres. The overall height of the turbine is 19 metres. Information submitted by the applicant indicates that each individual turbine produces in the region of 40,000 kWh per year.

The proposal requires to be assessed against the provisions of Policy LP REN 2, On Site Commercial and Domestic Wind Turbines, which states that on site commercial and

domestic wind turbines will be supported in forms, scales and sites where the technology can operate efficiently, the development is located as close to the premises which it is intended to serve as is safely and technically possible, servicing and access implications are acceptable, and subject to specific proposals satisfactorily addressing all other material considerations.

It must be demonstrated that the proposed development will not have an unacceptable adverse impact directly, indirectly or cumulatively on the following criteria:

- ***areas and interests of nature conservation (including local biodiversity, ecology and the water environment)***

The proposed development is not located within or adjacent to any nature conservation designation.

- ***highly valued landscapes including Gardens and Designed Landscapes***

The proposed development is not located within or adjacent to a Garden or Designed Landscape but is situated within an Area of Panoramic Quality which is discussed in more detail below.

- ***sites of historic or archaeological interest and their settings***

The proposed development is not located within or adjacent to any site of historic or archaeological interest.

- ***settlement character including conservation areas***

The site is situated adjacent to the dwellinghouse it is intended to serve and a small wooded area and electrical sub-station to the west and is backdropped by a small hill to the south which will help integrate it into the landscape. It is therefore considered that when viewed in relation to the existing development, the turbine will not have a significant detrimental impact on the surrounding landscape or the wider Area of Panoramic Quality.

The proposed development is not located within or adjacent to a conservation area.

- ***visual, residential and general amenity***

The site is situated adjacent to the dwellinghouse it is intended to serve and a small wooded area and electrical sub-station to the west and is backdropped by a small hill to the south which will help integrate it into the landscape. It is therefore considered that when viewed in relation to the existing development, the turbine will not have a significant detrimental impact on the surrounding landscape or the wider Area of Panoramic Quality.

With regards to noise, the Council's Public Protection Unit has advised that the noise levels likely to be produced by the turbine at the dwellinghouse it is intended to serve is likely to be above typical local background noise levels and therefore will be audible to the occupants of the property. They further advised that it is highly possible that the operational noise levels will lead to loss of amenity for the residents in this property. However, as the turbine is intended to serve the dwellinghouse it is situated adjacent to, and no representation has been received from the residents of the dwellinghouse the turbine is intended to serve, the Public Protection Unit raised no objections.

▪ ***telecommunications, transmitting or receiving equipment***

The proposed development will not impact upon any telecommunications, transmitting and receiving systems.

It should be noted that this application is one of two applications submitted for consideration for a total number of 4 wind turbines in relatively close proximity to each other. Whilst the individual merits of the proposal must be considered, in the circumstances it is also necessary to give cognisance to the likely cumulative impact of multiple proposals subject of separate applications at the same time. The applicant has been requested to provide the site survey (referred to in their supporting documentation but not supplied) to demonstrate why this is considered to be the most suitable site for the location of the turbines, and has also been asked to supply a cumulative impact assessment, in order that the consequences of multiple proposals can be properly assessed in the appraisal of individual applications. Despite these requests, no such information has been supplied. In the absence of any site selection or cumulative assessment in accordance with a recognised methodology, Development Services has proceeded to make its own judgement of the merits of the proposal(s) on the basis of information submitted.

In the case of the turbine subject of this application, it is considered that the applicant has demonstrated that the proposed turbine is sited as close to the premises it is intended to serve as is safely and technically possible and therefore there is an appropriate association between the two. Furthermore, when viewed in relation to the existing dwellinghouse, electrical sub-station and topography of the area surrounding the site, it is not considered that the turbine will have a significant adverse impact on the area and wider Area of Panoramic Quality.

It is therefore considered that the proposal is consistent with the terms set out in Policy LP REN 2.

C. Landscape Character

The site is situated within the Ross of Mull which has been designated as an Area of Panoramic Quality.

In terms of The Landscape Assessment of Argyll and the Firth of Clyde (1996), it characterises the Ross of Mull as consisting of boulder moor providing an open, wild and rugged landscape. The road through the Ross of Mull is the principal tourist route to Iona crossing the upland plateau, providing long views along the landscape towards the island of Iona. It further states that “the immediate fringes of this important road are particularly sensitive to change as they provide the foreground to the most accessible views. The rugged, scenic coastline is also important, particularly in areas close to the tip of the peninsula which are accessible by car”.

The turbine subject of this application is also located within the Boulders Moor Landscape Character Area where any built development needs to be very carefully sited as its key characteristic is the wild and rugged landscape.

Structure Plan Policy STRAT DC 8, Landscape and Development Control, states that development which by reason of location, siting, scale, form design or cumulative impact, damages or undermines the key environmental features of a visually contained or wider landscape or coastscape shall be treated as ‘non-sustainable’ and is contrary to this policy.

Furthermore Policy LP ENV 10 Policy, Impact on Areas of Panoramic Quality of the adopted Argyll and Bute Local Plan states that development in, or adjacent to, an Area of Panoramic Quality will be resisted where its scale, location or design will have a significant adverse impact on the character of the landscape.

It is considered that the applicant has demonstrated that the proposed wind turbine is sited as close to the premises it is intended to serve as is safely and technically possible and therefore there is an appropriate association between the two.

Furthermore, it is considered that the proposed turbine, when viewed in relation to the existing dwellinghouse and sub-station, will not have a significant detrimental impact on the surrounding landscape or the wider Area of Panoramic Quality.

In this regard, it is considered that the proposal complies with the criteria set out in Policies STRAT DC 8 and LP ENV 10 which seek to ensure that developments do not have an adverse impact on the character of the landscape.

D. Built Environment

There are no historic environment designations or interests relevant to the application site.

E. Road Network, Parking and Associated Transport Matters.

The applicant has indicated that the turbines arrive in three sections by transit van and therefore there is no requirement for a new vehicular access to be formed to serve the site. However, the Area Roads Manager was consulted on the proposal and raised no objection subject to details of all transportation materials, turbine parts and equipment required for their installation together with details for mitigation against damage to the public road network to be submitted.

In this regard it is considered that the proposal is consistent with Policy LP TRAN 6 of the adopted Argyll and Bute Local Plan which seek to ensure that developments are served by an appropriate means of vehicular access.

F. Climate change considerations

In assessing any application associated with the generation of renewable energy it is necessary to have regard to macro environmental consequences as a material consideration. Government and Development Plan policy supports renewable electricity generation in principle, in the interests of addressing climate change, provided that development does not impinge to an unacceptable degree upon its surroundings. As part of the decision making process, it is necessary to consider whether the advantages associated with the production of electricity from renewable sources, consequent CO₂ savings and the contribution which a development might make to the tackling of global warming. In this case, the turbine size at 15kW is limited, and therefore the contribution which the development will make to climate change will inevitably be small.

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**COMMITTEE PLAN RELEVANT TO APPLICATION:
10/01157PP**



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Ref: ABH1/2009

The following procedure provides a standardised procedure for the undernoted category of hearing.

ARGYLL AND BUTE COUNCIL

HEARING PROCEDURE NOTE

- | | |
|--|--------------------------|
| (1) Statutory Pre Determination Hearing | <input type="checkbox"/> |
| (2) Pan 41 Hearing | <input type="checkbox"/> |
| (3) Council Interest Application | <input type="checkbox"/> |
| (4) Discretionary Hearing | X |

1. On any occasion when the Council decides that a hearing for any of the categories detailed above is required.
2. The Committee Clerk will thereafter notify the applicant, all representees and objectors of the Council's decision to hold a Hearing and to indicate the date on which the hearing will take place. The hearing will proceed on that day, unless the Council otherwise decides, whether or not some or all of the parties are represented or not.
3. The Committee Clerk will issue an invitation to the hearing giving 7 days notice of the date, time and venue for the proposed Hearing to all parties.
4. At the hearing the Director of Development Services staff will present their recommendations to the Committee on how the matter should be disposed of.
5. The applicants will be given an opportunity to present their case for approval of the proposal and shall include in their submission any relevant points made by representees supporting the application.
6. The consultees, supporters and objectors (see notes 1 and 2), will be given the opportunity to state their case to the Council.
7. All parties to the proceedings i.e. the applicant, the Director of Development Services, the consultees, the supporters and objectors shall be given a period of time to state their case (see note 3). In exceptional circumstances and on good case shown the Committee shall be able to extend the time for a presentation by any of the parties to the hearing at their sole discretion.
8. Statutory consultees (including Community Councils) should be invited to attend the meeting to provide a verbal presentation on their written submissions to the Committee, if they so wish.

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9. The Members of the Committee only will then be given the opportunity to put questions to the Director of Development Services' representative, the applicant, the consultees, the supporters and the objectors.
10. At the conclusion of the question session the Director of Development Services' representative, the applicant, any consultees present and each of the supporters and the objectors will be given an opportunity to comment and sum up on any particular information given by any other party after they had made their original submission, with the Director of Development Services' representative first then the applicant, then the consultees, and then each of the supporters, and then each of the objectors as may be, in turn. The Committee will then debate the merits of the case and shall reach a decision on the planning application. No new information can be introduced at this stage.
11. A summary of the proceedings of the Committee in regard to this hearing will be recorded by the Committee Services Officer.
12. If it appears to the Chairman that any of the parties to the hearing is speaking for an excessive length of time he will invite them to conclude their presentation forthwith.

NOTE

- (1) Objectors who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all objectors.
- (2) Supporters who intend to be present and speak at a hearing are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them and to avoid repetition. To assist this process the Council will provide a full list of the names and addresses of all supporters.
- (3) Recognising the level of representation the following time periods have been allocated to the parties involved in the Hearing.

The Director of Development Services' representative – not more than half an hour
The Applicant - not more than half an hour.
The Consultees - not more than half an hour.
The Supporters - not more than half an hour.
The Objectors - not more than half an hour.
- (4) The purpose of the meeting is to ensure that all relevant information is before the Committee and this is usually best achieved when people with similar views co-operate in making their submissions.

Ref: ABH1/2009

- (5) Everyone properly qualified, as a representee on the application report who wishes to be given an opportunity to speak will be given such opportunity.
- (6) The Council has developed guidance for Councillors on the need to compose a competent motion if they consider that they do not support the recommendation from the Director of Development Services which is attached hereto.

I:data/typing/planning/procedure note

COMPETENT MOTIONS

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

DEFINING A MATERIAL CONSIDERATION

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

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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.