

MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held in the HOLYROOD SUITE, QUEEN'S HALL, DUNOON
on WEDNESDAY, 20 OCTOBER 2010

Present: Councillor Daniel Kelly (Chair)

Councillor Rory Colville	Councillor Donald MacMillan
Councillor Robin Currie	Councillor Roderick McCuish
Councillor David Kinniburgh	Councillor Alex McNaughton
Councillor Bruce Marshall	Councillor James McQueen
Councillor Alister MacAlister	

Attending: Charles Reppke, Head of Government and Law
David Eaglesham, Area Team Leader
John Irvine, Enforcement Officer
Jane MacLeod, Applicant
Tanya MacDougall, Supporter
Stephen Carroll, Supporter
Carol Gillies, Supporter
Councillor Walsh, Objector
Mrs McChlery, Objector
Miss Graham, Objector
Mr Findlay, Objector

Apologies: Councillor Vivien Dance Councillor Neil Mackay
Councillor Mary-Jean Devon Councillor Al Reay

1. FAMILY MEDIATION ARGYLL AND BUTE: CHANGE OF USE OF DWELLING (CLASS 9) TO FAMILY MEDIATION CENTRE (SUI GENERIS) (RETROSPECTIVE): ATHOLE COTTAGE, 20C WELLINGTON STREET, DUNOON (REF: 10/01036/PP)

The Chair welcomed everyone to the meeting and asked the participants to introduce themselves.

The Head of Governance and Law spoke to the procedure that would be followed at the meeting and in accordance with the first step, asked attendees who wished to address the Committee to identify themselves.

Planning Authority

Mr Eaglesham spoke regarding the application advising that it was for a change of use of a dwelling (class 9) to family mediation centre which falls outwith the class categories and therefore is referred to as sui generis. He referred to the location plan and the earlier informal site visit by the Members of the Committee. He advised that there were no physical changes required to the property.

Mr Eaglesham advised his understanding of the proposed use was that it was to be used in relation to families in dispute in attempt to resolve their difficulties. The families using the centre would be supervised at all time by staff and the

centre would operate during the hours of Monday to Saturday, 9am to 5pm for sessions lasting between 1 and 2 hours.

Mr Eaglesham advised that there had been no objection from the Council's Environmental Health Officer and that the Roads Authority had asked the case to be deferred to see whether site lines could be achieved. They had also advised that there should be 4 spaces for parking for the centre, an additional 2 for the cottages (1 each) and a turning space. From the site visit it was clear the proposal did not meet these standards.

Mr Eaglesham then discussed the 26 letters of representation (24 objections and 2 in support) and issues raised which included an increase in the comings and goings of people at non specific times, limited parking, road safety issues, noise level increases in the area due to shouting adults and children and that the proposal was incompatible with the surrounding residential area. Within the two letters of support there was comment that one tenant had no experience of complaint and a solicitor had commented that they had not observed any of the issues raised during their visits.

In conclusion, Mr Eaglesham advised that the policy was within the settlement zone and therefore STRAT DC 1 was applied. The proposal was consistent with this policy and he did not consider it was contrary to LP BAD 1 which was more appropriate in use for takeaways or public houses due to nuisances caused by odour, noise etc. The bulk of representations were in relation to impact on privacy and amenity but from the information supplied by the applicants there were only a maximum of 3 appointments per day with these visits being staggered. He felt this was a low key use and with the addition of conditions restricting the opening hours and number of appointments per day this would ensure no undue increase in usage. He suggested that if the Committee were minded to grant the application they may wish to do so for a 12 month period to allow a re-assessment in view of the anti social behaviour claims. The proposal was also complied with LP ENV 1. While the applicant couldn't comply with the parking requests he felt that there would be little increase in the property than if it were a family home and therefore it was not appropriate to recommend refusal on roads grounds.

Applicant

Mrs MacLeod spoke on behalf of the company in her capacity as one of the Company Directors. She advised that Tanya MacDougall who was the centre manager was present if the Committee had any questions relating to the operation of the centre and that in addition Mr Carroll and one of the volunteers would also speak.

Mrs MacLeod spoke to the background of the service which had been in operation since 2001. The service had begun in Oban but was offered out to other areas in Argyll and Bute. She commented on the similarities of the property in Oban to Athole Cottage, advising that both properties were homely, making children feel comfortable and that they had gardens that the children could run out in if they felt overwhelmed during a reunion which could often be with a parent they had been split up from for some time. She advised that it was crucial to have a safe, comfortable environment for these mediation sessions and that Athole Cottage provided this. She discussed previous arrangements for

the sessions which included use of sterile halls which were not suitable, confidential or of any comfort to a child. She also advised that the house had been offered to the Company as a safe, secure family home and this was the basis which it was being used.

Mrs MacLeod advised that she had checked with Strathclyde Police in Oban to see if there were any complaints in relation to the centre. The Police had confirmed that there were no complaints on record. She advised that she felt the movement to and from Athole Cottage would be no greater than normal family use and apologised for the fact that planning permission had not been sought before the centre started operating and that she hoped the Committee would deal with on the merits of the case and not on the basis of being retrospective. She commented that the proposal did not breach the Development Plan and that by no stretch of the imagination could it be considered a bad neighbour development.

Mrs MacLeod then spoke regarding arrangements for use of the centre and of the no drink or drugs or bad language agreement that clients must sign up to.. She extended an invite to the objectors to visit the centre to review the work taking place so long as there were not sessions being run. She discussed the hours of operation advising of the pattern in increased activity of the centre and categorically denied that there were any loud, ranting exchanges due to clients signing up to the agreement.

Mrs MacLeod then discussed the town centre location which meant that there were rarely travel costs for those visiting the centre as there was option of walking or public transport therefore meaning there was no additional traffic.

She spoke regarding the importance for children to have access to two parents and how this was the same regardless of whether the parents were living together or had split up. Athole Cottage allows this to happen.

Mr Carroll, who was a client of the centre, had waived his right to confidentiality in order to speak in support of the application. He advised that he had not seen or heard from his child for one year and had initially been denied a right to see his child by the Courts when his partner had left him. He had been put in touch with the centre and had eventually been allowed an hour per week access. He was very impressed with the staff at the centre and without their supported was not sure where or what he would be doing. He had been a client of the centre for a year and half and his access to his son had now increased to 6 hours per week.

Mr Carroll advised that he had initially visited the centre by cars and that in his experience he had always found plenty of room. He had never observed anyone reversing onto the highway and commented that the only noise issue he had experienced in the area was down to a cockerel.

Mrs MacLeod surmised by advising that children needed 2 parents and that the centre was there as a means to ensure children were not deprived of this contact. The application was compliant with the Development Plan and merits approval. She urged the Committee to grant the application.

Ms Gillies, one of the centre volunteers, spoke advising that the building was small but adequate for purpose. There were very few clients who had cars and a

lot who resided outwith the area, arriving by ferry and walking to the centre. In her experience there had never been an instance where 2 cars had met. Amongst all the staff present at the hearing they had covered all the visits and they had never encountered any raised voices. She commented that it would be tragedy if the Committee turned their backs on the centre and showed they don't care.

Councillors not on the Committee

Councillor Walsh advised that he would be putting the representations received at his surgery to the Committee. He had received significant representations regarding the use of the centre which he commented was not an attack on mediation services. Many of the complaints he had received related to the detrimental impact to the amenity and area in which the residents lived.

Councillor Walsh commented that concerns had first been raised with him regarding the loss of privacy and amenity due to increased activity at Athole Cottage. There was weekend disturbance on Saturday and this was put down to what was seen to be illegal and increased activity in a quiet cul de sac location. His constituents felt that there was potential for future noise and wanted to protect their comfortable environment.

Councillor Walsh advised he was aware of the need and importance of mediation but not at this location. He advised that he was discussing alternative accommodation for the service with the Council's Head of Children and Families and was not therefore discussing the removal of the service. He accepted that Athole Cottage was no doubt a homely, family setting the location but commented that the location was wrong for users and residents. There was a lack of space and there were clear road safety and anti social behaviour concerns. The development was inconsistent with Policies and their objectives. He then discussed Policies STRAT DC 1, LP CON 1, LP ENV 1 and LP BAD 1 and how each of these policies were breached by the development on grounds mainly of the nature of the use, loss of amenity and noise/poor behaviour regardless of how well run or supervised the centre was.

He then spoke of the traffic and pedestrian conflict due to the narrow access and no footpath or turning facilities advising his constituents had observed people reversing onto the main road. He seen no proposal to address this within the application and questioned where the planning gain was to overcome the breaches in policy. He was concerned that there was no recommendation for a Section 75 to address this within the Head of Planning and Regulatory Services' report. He stated this was at variance with the requirements of planning gain on the basis that the Roads Authority had identified a threat to safety which compromised LP TRAN 4 and LP TRAN 6. He requested that the application for change of use be refused and suggested that the service could continue if thought were given to an appropriate enforcement period.

Objectors

Mrs McChlery advised the Committee she was a resident of Wellington Street and a retired Police Sergeant who had had special responsibility for family problems. She was well aware of the work carried out at the centre and that it was to be applauded. However, she had concerns about safety having seen

numerous vehicles reversing on to the Main Road over the years (including recently). She considered the site to be very unsafe.

On the subject of noise she advised that yes she had heard some increased noise levels but a bigger concern was that the area was not fenced off and was close to the road. She also had concern about access of emergency service vehicles and did not think they would access the area if there were cars parked. She did not consider the safety angle had been thought through and that there must be other places which were safer and could provide the same facilities.

Miss Graham advised that she was a neighbour whose house backs onto the lane. She was aware of what the centre was about and the good work that they do. She advised that she agreed with the concerns re road safety aspects but that her focus would be on the noise issue. She reported that there had been 3 instances where she had witnessed people “kicking off”. She was aware that the Police had been involved in one of the incidents and that the situation had been very scary. She accepted that on the third occasion the situation had been sorted out quickly.

She advised that the noise from the traffic passing vibrates her home and that there is a privacy issue for her house as clients walked past her house and she felt the need to ensure that her blinds were drawn. Her privacy was also affected due to the centre looking onto her drying green. She advised that the scheme she had previously lived in was quieter than her new home having recorded 10 cars passing between 9-10am on a Saturday morning. She commented that this was less than when the centre had first opened and that although she was not certain whether this was centre or staff users, considered the usage to be excessive.

With regard to Mr Carroll’s submissions, she advised that she had full respect for what he had said but generally one of the parents involved (if not both) would have a home and wondered why the volunteer staff could not conduct the visits within the parents own home.

While there was only one person in the centre for a set time she still felt there was a lot of noise and a lot of traffic which all added up in a day.

Miss Graham advised that she had witnessed kids running up as far as her house before being noticed by volunteers who then collected the child. She commented that they were seconds from the road and an accident.

Miss Graham commented that she was aware that the Council had a vested interest but wondered whether the centre was inspected by the Care Commission. She also wondered if the centre had a fire certificate in their capacity for looking after children. She also queried whether volunteers were vetted.

Mr Findlay advised he had only one question which was why the centre was kept so secret as residents were not told or consulted about it.

Question Time

Councillor McCuish asked if there had been any mediation with neighbours given

the sensitivity. Mrs MacLeod advised that with hindsight this would probably have been beneficial although the use of the premises was to be low key and quite (despite what the Committee had heard. She again confirmed that the Centre were happy for neighbours to visit the centre and discuss the kind of work carried out by the volunteers.

Councillor McCuish felt that since the location was quite, any noise increase would be noticed and advised that in his opinion Oban was in the Main Street and therefore not affected so much by any noise increase. Mrs MacLeod advised that it was a flat with families living beside the Oban centre and that the neighbouring families had not expressed any concern.

Councillor Kinniburgh questioned whether there was a back door to the property leading onto the alleyway. Mrs MacLeod advised there was not.

Councillor Kinniburgh asked about the garden at Athole Cottage commenting that the Oban garden had seemed to be enclosed whereas this garden was not. He asked what steps were taken to address the comment about the child getting as far as the window of Miss Graham's cottage. Mrs MacLeod advised that children are prone to wandering although they were always monitored by staff to ensure they don't get further than this. Councillor Kinniburgh followed this up by asking Mrs MacLeod if she felt the children using the centre were safe. Mrs MacLeod advised that the children were more closely monitored than if a child was put out to play by a mother who was, for example, cooking.

Councillor McQueen questioned how they could guarantee there was no trouble from clients. Mrs MacLeod advised that workers were always supervising and referred to the strict policies on drink and drugs. There were strict limits on when sessions could take place (from 9am to 5pm) and if someone had turned up intoxicated they would be asked to leave.

Councillor Marshall asked Miss Graham whether she was sure the people she had heard passing her window were using the centre given they had heard there was no access via a back door. Miss Graham advised she was certain they were clients.

Councillor Marshall asked Mrs MacLeod about whether the centre was inspected by the Care Commission. Mrs MacLeod advised that the centre were not in charge of care provision and only supplied a mediation service. They were not therefore required to be inspected. She also advised that a fire certificate was not necessary.

Councillor Marshall asked Councillor Walsh about his comments re noise complaints on Saturdays. Councillor Walsh advised that there had been complaint about an incident early on a Saturday morning (possibly about 10am) during the early stage of operating. He had no detail other than there was shouting/swearing.

Councillor Marshall asked about planning gain advising that while it was good if gain could be achieved but given the organisation were a charity did Councillor Walsh think it was fair to ask for gain in these circumstances. Councillor Walsh advised that there was poor access and that a Section 75 agreement to improve this rather than financial input. He considered that there had been disregard to

the comments by the Roads Authority.

Councillor Marshall asked Councillor Walsh for his comments about a Section 75 regarding the illegality reversing out of the lane. Councillor Walsh advised that if the committee were so inclined to recommend a Section 75 it would be for the Planning Authority to pursue and come back with recommendations.

Councillor Marshall asked about the request from Roads to defer a decision. He asked whether there had been a definitive response yet. Mr Eaglesham advised that they had asked for a decision to be deferred until the visibility splays could be looked at. As the applicant could not deliver anything other than what was on the ground. He advised Roads were consulted in this case as the impact the change of use would have was unknown. He accepted that there were issues with the standards re parking and visibility but had to consider whether the change of intensity was greater or less than the existing useage. Given cars had been reversing for a number of years it could be accepted that this situation was always there. In weighing this shortfall he did not consider this to be of such significance as to merit a refusal.

Councillor Marshall asked whether the same situation existed in other locations. Mr Eaglesham advised that there were a number of premises which don't have visibility or ability to turn a vehicle around.

Councillor Currie asked for comment as to whether if the cottage had been let to a family with 3 cars as a private let then whilst there may be concerns about safety then there wouldn't be opportunity to interfere. Miss Graham advised that what was being considered was not about what could or might have been but what was here now.

Councillor Colville asked whether, in terms of Policy LP BAD 1, the flexibility where there was good public transport was applied in this case. Mr Eaglesham advised that this applied and also the consideration as to whether there was a significant increase in comparing the lawful use with the proposed new use.

Councillor Colville asked if planning were to be granted for a one year period whether there was any chance of alternative accommodation being found. Mrs MacLeod advised that Athole Cottage was perfect at the moment but in discussions with the Council none of the suggested alternatives were suitable. If there was an alternative as good as Athole which did not cost more then it would certainly be considered.

Councillor Colville asked Councillor Walsh what the likelihood was of this. Councillor Walsh advised the discussions were undertaken to ensure an amicable outcome and that the Council were currently spending capital on Dunclutha Lodge which he felt was suitable for the centre.

Councillor Kinniburgh felt a lot of ground had been covered but that he remained concerned about safety and the Roads Authority report. He questioned the number of parking spaces available. Mr Eaglesham confirmed there were 4 spaces, 2 for the centre and 2 for the other cottages. Councillor Kinniburgh then asked if 4 cars were parked there would there be any option other than to reverse. Mr Eaglesham stated the person could ask for one of the cars to be moved but that the most obvious way out was to reverse.

Councillor McCuish queried whether if the application for change of use were lodged before the centre moved if whether a neighbourhood notification would have been necessary which would have enabled neighbours to object. Mr Eaglesham confirmed this would have been the case. Councillor McCuish asked whether this neighbour notification had taken place at the retrospective stage. Again this was confirmed.

Councillor McCuish asked about the suggested alternative accommodation stating that he had thought Dunclutha Lodge was for sale. Councillor Walsh advised that there was a lodge and a house and that the lodge would be suitable and could be made available.

Councillor Marshall queried the noise behind the premises, he wondered whether this could be as a result of people taking the wrong turn. Ms Gillies advised this could be possible as most people arrived on foot.

Councillor Marshall queried whether the log of appointments contained all details since the centre opened on 12 April 2010. Mrs MacLeod confirmed it did.

Summing up

Mr Eaglesham advised there was not a great deal he could add. The Committee had heard the merits of the project and while the aims were worthy they were not a planning concern. The issue at hand was the impact between residential use of the cottage or change of use and whether this led to a greater or lesser use of traffic.

He was sympathetic to the concerns of objectors that this was not simply about noise or disturbance but sensitivity of bringing strangers rather than have regular neighbours but in their consideration a balance approach must be taken as to whether at the end of the day this could be considered as an appropriate reason to refuse. The view in this case was that it was not and on this basis the application was recommended for approval.

Mrs MacLeod suggested that the proposed use was less intensive than if a family with 2/3 cars were in residence. The centre was only in use from 9am to 5pm 6 days per week and the area in which it was located was a mixture of residential and commercial properties with a pub and Building Supplier being nearby. It was considered a safe and quite place for a child to be and while she appreciated the sensitivity of the neighbours, this was not a planning issue.

She commented that the Committee had heard that reversing out of the lane onto the road was not a new issue and that she had not been aware of any cases of people doing this since the centre opened.

Mrs MacLeod advised that a Section 75 Agreement was out of the question as the centre did not have control over the land and that it was not possible to impose a Section 75 Agreement to forbid reversing onto a road. She commended the application to the Committee.

Mr Carroll spoke about the concerns re noise and reversing. He had observed this up and down Wellington Road by residents. He felt that there was ample

space for turning given there was rarely more than 3 cars parked. He had never seen/heard what had been put forward by the objectors and considered the area perfect for kids and parents. He added that there was ample room for parents and children approaching on foot as if there was a car approaching, they would normally stop until the pedestrians had passed.

Ms Gillies commented that if there were noise from the centre this would obviously cease at 5pm. She felt the centre had been hit by a hostile smear campaign which was unfortunate.

Councillor Walsh drew distinction to value and attention to policies. He felt there was potential for increased activity and that noise would follow. He also felt traffic usage was bound to increase and although the access was substandard, it did not make it right to ignore this. He indicated that his wish would be for the Committee to refuse the application on Policy grounds.

Mrs McChlery reaffirmed that her main worry was not the service offered but the location and road safety stating that traffic over the last 20 years had tripled and this with speeding vehicles had potential for disaster.

Miss Graham stated that at no time had anyone suggested a smear campaign and that the issue was with the different use. She asked Councillors to recognise their duty of care in deciding the outcome.

Mr Findlay confirmed he had nothing to add.

Debate

Councillor Marshall commented on the wonderful job done at the centre. He was impressed and moved by what had been said. He felt that the permission could be granted for a year and was fully in favour of that outcome. He referred to the Report by the Head of Planning advising that the application was compliant with policy and that there were no other material considerations therefore there was no reason why the application should not be approved.

Regarding the Roads issues, he reminded the Committee that there was no actual need to consult them on the application and that their response should be considered only as a comment.

He discussed the level of use of the centre commenting that there had only been 159 clinics in 6 months which was less than one per day which was of no concern to him.

Councillor MacAlister felt in a difficult position as this application was within his ward but as he was on this Committee he could not discuss it with his constituents. He referred to the comments regarding loss of privacy and amenity of the residents stating that due to the present financial circumstances the use of the clinic was set to increase. He was perturbed as planning permission had not been sought before the centre had opened and had concerns about the cognisance he should take of the lack of planning gain.

Councillor Kinniburgh had concerns about access to the property. Given there was only 2 rooms in the property how many cars would any family realistically

need. As a Section 75 could not be provided to assist road safety he would prefer for the centre to be elsewhere.

Councillor Colville supported Councillor Marshall's views. He recognised there were concerns but would like to see a temporary permission to allow a suitable alternative venue to be found.

Councillor Currie suggested adding to the conditions to indicate that a temporary permission was being granted to allow discussions with the Council in attempt to locate other accommodation.

Councillor McNaughton was of similar opinion although had some reservations regarding location.

Councillor McQueen was not in favour of approving the planning permission as he considered that the centre was in the wrong location.

Councillor McCuish stated that he fully supported the service but that it was in the wrong location. He had comfort from the knowledge that the Head of Service was working with the Service to identify accommodation which would be suitable for both parties. He commented that this position could have been avoided if neighbours had been consulted and brought onboard at the start.

Councillor MacMillan agreed with Councillor McCuish stating that consultation should have happened before the centre had opened.

Motion

That the application be refused on the basis that (a) the use would adversely affect the privacy and amenity of the neighbouring properties and would introduce an incompatible and incongruous use into a quiet residential area and (b) the operation of the centre will materially increase the use of the access lane which has substandard width and insufficient visibility splays to accommodate the likely volume of traffic with a consequent detrimental impact on road safety.

Moved by Councillor Kelly, seconded by Councillor McQueen

Amendment

That the application be approved subject to the conditions and reasons outlined in the report by the Head of Planning and Regulatory Services.

Moved by Councillor Marshall, seconded by Councillor McNaughton.

Decision

The motion was carried by 6 votes to 4 and the Committee resolved accordingly to refuse planning permission.

(Ref: Report by Head of Planning dated 26 August 2010, submitted)

2. ENFORCEMENT REPORT - 10/00168/ENOTH

The Committee were invited to consider how best to progress the enforcement case 10/00168/ENOTH.

Decision

Agreed to serve an enforcement notice with a 6 month period for compliance.

(Ref: Report by Director of Planning and Regulatory Services dated 18 August 2010, submitted)