

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Customer Services
Executive Director: Douglas Hendry



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13 October 2010

NOTICE OF MEETING

A meeting of the **PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE** will be held in the **HOLYROOD SUITE, QUEEN'S HALL, DUNOON** on **WEDNESDAY, 20 OCTOBER 2010** at **2:30 PM**, which you are requested to attend.

Douglas Hendry
Executive Director - Customer Services

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST (IF ANY)**
3. **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)**
Report by Head of Planning and Regulatory Services (Pages 1 - 12)

DISCRETIONARY HEARING PROCEDURE NOTE (Pages 13 – 18)

- E1 4. ENFORCEMENT REPORT - 10/00168/ENOTH**
Report by Head of Planning and Regulatory Services (Pages 19 - 20)

The Committee will be asked to pass a resolution in terms of Section 50(A)(4) of the Local Government (Scotland) Act 1973 to exclude the public for items of business with an "E" on the grounds that it is likely to involve the disclosure of exempt information as defined in the appropriate paragraph of Part 1 of Schedule 7a to the Local Government (Scotland) Act 1973.

The appropriate paragraph is:-

E1 Paragraph 13 Information which, if disclosed to the public, would reveal that the authority proposes-

- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
- (b) to make an order or direction under any enactment.

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: 10/01036/PP

Planning Hierarchy: Local

Applicant: Family Mediation Argyll & Bute

Proposal: Change of use of dwellinghouse (Class 9) to family mediation centre (Sui Generis) (Retrospective).

Site Address: Athole Cottage 20C Wellington Street Dunoon Argyll.

DECISION ROUTE**(i) Local Government Scotland Act 1973**

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

- Change of Use of dwellinghouse (Class 9) to family mediation centre (Sui Generis) (retrospective).
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended, subject to the undertaking of a discretionary hearing, that planning permission be granted subject to the following conditions, reasons and informatives.

(C) HISTORY:

Planning enforcement investigation commenced on 18th May 2010 following receipt of a complaint. There is an associated enforcement report (Ref: 10/00168/ENOTH), elsewhere on this committee agenda.

Planning application 10/00931/PP submitted on 28th May 2010 for the change of use of dwellinghouse to family mediation centre. However, the site plan submitted with this application identified the wrong property so the application was subsequently withdrawn.

(D) CONSULTATIONS:

Area Roads Manager (response dated 13th July 2010): Defer decision.

'The available sightlines are 7.5m x 2.4m to the south limited by the gate pillars and hedge of the adjacent property to the south of access. On the northern side the available sightlines are 24m x 2.4m limited by the gate pillars of the adjacent property. The required sightlines are 42m x 2.4m in both directions. Due to the possibility of different drivers frequenting the location, the sightlines are based on the 85th percentile speed for Wellington Street which is the main north-south thoroughfare. All walls, fences and hedges within the sightlines must be maintained at a height not greater than 1m above the level of the road. Adjustments to the gate pillars of properties either side of the access and the hedge to the south will be required to be lowered. To ensure that these are maintained at these heights a Section 75 Agreement will be required for both properties.

One space is required for each of the existing 2 no. cottages and 4 no. spaces should be provided for mediation. Provision of a turning area must be provided within the site. All vehicles must be able to leave and return to the carriageway in a forward manner.'

Environmental Health (response dated 14th July 2010): No objection.

(E) PUBLICITY:

Under neighbour notification procedures 22 representations have been received.

(F) REPRESENTATIONS:

(i) Representations received from:

14 template objection letters received 5th August 2010 from the following:

- Angus Robertson 33 Wellington St, Dunoon PA23 7LA
- N & W Honeyball 16a Clyde Street Dunoon PA23 7AJ
- L Connelly 12B Wellington Street Dunoon PA23 7LA
- Anna Maria Sim Roselea House Wellington Street Dunoon
- Mary Watt 5 Rosemary Cottage Clyde Street Dunoon
- Owner/Occupier 4 Rosemary Cottage Dunoon
- A. McGilvray 1 Rosemary Cottage 14 Clyde Street Dunoon PA23 7HY
- G & D Aitchison 12B Wellington Street Dunoon Argyll
- L Graham Eldon Cottage 16A Wellington Street Dunoon Argyll PA23 7LA
- A W Stevenson 3 Rosemary Cottages Clyde Street Dunoon Argyll
- Robert & Carole McChlery 8 Wellington Street Dunoon Argyll PA23 7LA
- Daniel MacPherson 34 Kames Place Wellington Street Dunoon
- Selbourne Hotel Dunoon.
- Fiona & Joe Findlay 2 Eldon Cottage 18 Wellington Street Dunoon
- Ellen Connell, Andrew Connell and Carlyn Millar. No address given.

Objections also received from Councillor Walsh (email dated 5th July 2010) and Mr J Smith (letter dated 7th July 2010), Athole House, 22B Wellington Street, Dunoon, Argyll, PA23 7LA.

Further letter of objection from L. Graham, F. Findlay and J. Finlay (received 3rd September 2010), 1 Eldon Cottage, 16A Wellington Street, Dunoon, Argyll, PA23 7LA.

Two letters of support received from the following:

- Ronald J McNeil (letter dated 23rd June 2010) 26 Alexandra Place Corran

Esplanade Oban PA34 5PU.

- Jane MacLeod (letter dated 18 June 2010) Achnaba House By Lochgilphead Argyll PA31 8RY

(ii) Summary of representations received:

- i. The centre was set up without planning permission There has been no consultation with residents who live in the vicinity of Athole Cottage.

Comment: There is no requirement for the applicant to consult with local residents and while it is regrettable that this use has commenced without the benefit of planning permission, this application has been submitted in an attempt to rectify this matter.

- ii. This use is incompatible with the surrounding residential area. This is inconsistent with the design and layout of the area and continuation of this use would have an undesirable and unacceptable precedent.

Comment: See assessment below

- iii. Since the centre opened our privacy and amenity has been adversely affected and there has been a significant increase in nuisance. Increased comings and goings from both vehicles and visitors at non-specific times.

Comment: See assessment below

- iv. The lane serving this site is narrow, un-made and unadopted. There is no passing place or footpath and parking is limited. This can result in the lane being grid-locked and reversing from the lane onto Wellington Street. There are also poor sightlines and this centre now compromises road safety.

Comment: See assessment below.

- v. The development as proposed would represent a significant departure from current policies and the area generally, including policies LP ENV 1, LP BAD 1 and LP TRAN 6.

Comment: See assessment below

- vi. Noise levels have increased significantly from the amount of children at the property to adults raising their voice.

Comment: See assessment below.

- vii. We have always lived in this area but now feel insecure in our own homes.

Comment: See assessment below

- viii. Family Mediation Argyll & Bute (Oban) have been my tenants since 2008 and during this time there have been no instances of disturbance or nuisance arising from their operations, either with families entering or leaving the premises or with children activities in communal garden space. To my knowledge there have been no instances of disturbance or complaint from any of the other residents within the building.

Comment: See assessment below.

- ix. I regularly visit the premises as a solicitor and on no occasion have I seen unruly behaviour. The use of the Dunoon premises is no greater than that of a normal family. The Family Mediation Service carries out a very important function in Argyll.

Comment: See assessment below.

- x. The mediation centre is clearly unauthorised. There seems to be little point in applying for planning permission because it is quicker, simpler and cheaper (no financial penalties) to ignore the system and submit an application for retrospective consent.

Comment: The retrospective nature of this application fully recognises that the current operations are unauthorised. It is no quicker, simpler or cheaper to submit an application in retrospect as this is the same process and cost as a normal planning application.

- xi. We accept that the premise does not function as an office per se. However, the use cannot be described as residential. The primary use is meetings and consultations akin to a quasi-commercial use.

Comment: The department fully recognises that the current use is not residential and represents a material change of use from the lawful (Class 9) use of this dwellinghouse. This is the reason why it was established that there was a breach of planning control and the submission of a change of use planning application was requested.

- xii. It is no exaggeration that noise from both vehicles and pedestrians has on occasion been excessive and disturbing. For the applicant to insinuate this is a lie is offensive.

Comment: See assessment below.

- xiii. The police have been called on one occasion and there have been other outbursts. The fact that the clients may sign a document does not physically prevent them from being loud and abusive. The applicants attempts to deny these incident is reprehensible.

Comment: See assessment below.

- xiv. We stand by our position regarding the access lane. It cannot safely and adequately serve the centre which is essentially a public facility and not a private home.

Comment: See assessment below.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- (i) Environmental Statement: N**
- (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: N**
- (iii) A design or design/access statement: N**

- (iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: N**
- (v) **Supporting information received from applicant (letters dated 18th June 2010 and 9th August 2010), summarised below:**

- The centre carries out a very important function in Argyll. The interests of children are put first. In the years that the service has operated I am not aware of any trouble inside or outside the premises.
- We do not and will not use the premises as an office base. Our administration base with its associated staff is in Oban, not Dunoon. Athole Cottage is purely used for contact visits or mediation meetings.
- This property is used on an intermittent basis between 9 am and 5 pm, Monday to Saturday. Clients using the centre arrive on a staggered basis. The vast majority arrive on foot and walk straight into the centre.
- Only one neighbour has come to the centre to ask about the work we do and interestingly that person is not one of the objectors. As explained in our Statement of Operation our clientele covers all sectors in the communities from the professional to the unemployed.
- The allegation that there have been “loud and ranting exchanges” from the centre is risible. Anyone who had made any enquires into the terms and conditions that all clients have sign up to before use of the centre would know that this is simply impossible.
- The lane serving the centre is private and belongs to the owner of the property. Access for emergency vehicles remains the same for any lessee of this property whether it is an organisation or a family. Wellington Road already supports a busy garage business, a photographers business and an hotel. No mention of these other businesses and their associated traffic has been made in this objection.
- If Planning Permission for use of this house is denied, it is unlikely that Family Mediation Argyll & Bute would be successful in obtaining property elsewhere in Dunoon and Family Mediation Argyll & Bute will have no alternative but to withdraw its service from the Cowal area and concentrate on its other centres in Oban, Helensburgh and Lochgilphead.

Submitted with this letter is a detailed report on use of the centre since it opened. This highlights the very limited amount of vehicular traffic created by the centre and operational days and hours per week. On average there are two mediation sessions per day – Monday to Saturday; although on some occasions there can be up to three per day. Most clients arrive on foot. Should Planning Permission be granted it is anticipated that the level of use will be no greater than that detailed in the submitted report.

(H) PLANNING OBLIGATIONS

- (i) **Is a Section 75 agreement required: N**

-
- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: N**

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- (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 Structure Plan' 2002

STRAT DC 1 – Development within the Settlements

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment

LP BAD 1 – Bad Neighbour Development

LP COM 1 -- Community Facility Development

LP TRAN 4 – New & Existing Public Roads & Private Access Regimes

LP 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 4/2009.**

N/A

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: N

(L) Has the application been the subject of statutory pre-application consultation (PAC): N

(M) Has a sustainability check list been submitted: N

(N) Does the Council have an interest in the site: N

(O) Requirement for a hearing (PAN41 or other): Y

For a discretionary hearing, twenty-one or more planning/land use-based representations require to be submitted and this threshold has been exceeded.

In deciding whether to exercise the Council's discretion to allow respondents to appear at a hearing, the following are of significance:

- How up-to-date the Development Plan is, the relevance of the policies to the proposed development and whether the representations are on development plan policy grounds which have recently been considered through the development plan process.
- The degree of local interest and controversy on material considerations together with the relative size of community affected set against the relative number of representations, and their provenance.

In this case, many of the respondents have properties in the vicinity of the application site and, given the number of representations (22), it is considered that Members should agree to undertake a hearing prior to the application being determined.

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

The key issue is the appropriateness of such a use operating within this residential area of Dunoon. While this application has generated a significant body of objection, it is felt that the actual use of this property, as a mediation centre, is low key and has a very

limited impact. Conditions can be imposed on the grant of planning permission to ensure the use does not intensify by stipulating the days per week and hours per day the centre can open. It is also proposed to restrict the number of appointments held on any given day to no more than three.

Roads & Amenity Services has raised an objection to this application due to limited visibility splays and insufficient parking. However, this new use does not generate a significant volume of traffic beyond what could reasonably be expect from a dwellinghouse, the lawful use of this property, and there is sufficient parking and turning for two cars at this location.

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

(R) Reasons why planning permission or a Planning Permission in Principle should be granted

The proposal accords with policies STRAT DC 1 of the Argyll & Bute Structure Plan 2002 along with policies LP ENV 1, LP COM 1, LP TRAN 4 and LP TRAN 6 of the Argyll and Bute Local Plan 2009 and the proposal raises no other material consideration which would justify refusal of permission.

(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: N

Author of Report: John Irving

Date: 18.08.2010

Reviewing Officer: David Eaglesham

Date: 26.08.2010

**Angus Gilmour
Head of Planning**

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO 10/01036/PP

1. The development shall be implemented in accordance with the details specified on the application form dated 14th June 2010 and the approved drawing titled 'Site & Location Plans', Drg. No. 01, received 16th June 2010 unless the prior written approval of the planning authority is obtained 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. The use hereby permitted shall be discontinued no later than 30th September 2011, unless a further permission has been sought and granted.

Reason: *In order to enable the Planning Authority the opportunity to assess the effect of the use on the surrounding area.*

3. The use hereby approved shall not operate except between the hours of 9:00am until 5:00pm Monday to Saturday only.

Reason: In order to control the level of operation/intensity of use and to protect the established levels of privacy and amenity afforded to neighbouring residential properties.

4. There shall be no more than 3 client mediation/contact appointments during any day, unless the prior written consent for variation is obtained in writing from the Planning Authority. A diary shall be maintained which details the date, time (including duration) of all such appointments and this diary shall be made available for the inspection of the Planning Authority, upon request.

Reason: In order to control the level of operation/intensity of use and to protect the established levels of privacy and amenity afforded to neighbouring residential properties.

APPENDIX B – RELATIVE TO APPLICATION NUMBER: 10/01036/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

Athole Cottage is located within the defined settlement zone of Dunoon, which is identified as a Main Town by the Development Plan. Policy STRAT DC 1 of the Structure Plan applies. Developments that are not deemed consistent with this policy are those bad neighbour developments which are essentially incompatible with the close configuration of land uses found in settlements.

Policy LP BAD 1 of the Local Plan applies to 'Bad Neighbour Developments' as defined by Schedule 7 of the Town & Country Planning (General Development Procedure)(Scotland) Order 1992. Given the location and nature of this development, as outlined in the next section, the family mediation centre is not considered to constitute a 'Bad Neighbour Development' and therefore policy LP BAD 1 does not apply to this assessment.

Representations received raise concerns that this new use is a bad neighbour development and that established levels of residential amenity have diminished as a result of this development. However, the centre only operates on an appointment basis and only during the day between the hours of 9am and 5pm. It is closed on Sundays. On average there are just two appointments per day and the purpose of the centre is to provide a homely environment and for this reason every effort has been made to ensure the premises is akin to a dwellinghouse. For this reason no internal or external alterations have been undertaken to the property. All appointments are fully supervised and this in turn controls the activities and impact of the centre. Appointments are also staggered to ensure parties visiting the centre do not meet each other in close vicinity to the site; this prevents conflict which could otherwise lead to anti social behaviour and have an adverse impact upon amenity. Importantly, environmental health have raised no concerns or objection towards this development.

It is felt that, while a substantial number of objections have been received against this new use, in reality the impact of this use is low key and controlled by the operations of the centre. Notwithstanding the aforementioned, it is considered appropriate to condition the grant of planning permission to restrict the days and hours of operation per week and to also restrict the number of appointments per day. These conditions will ensure that the use does not intensify resulting in it having an increased and potential adverse impact within the surrounding residential area. Furthermore, as a further safeguarding measure, it is recommended that planning permission be granted for one year only. This will afford the Planning Authority an opportunity to reassess the impact of the use and withhold the grant of a further planning permission if deemed appropriate.

B. Location, Nature and Design of Proposed Development

This application has been submitted to regularise the current unauthorised use of this dwellinghouse, a Class 9 use as defined by the Use Classes Order, to a family mediation centre, a *Sui Generis* use.

Athole Cottage is a single storey, end terrace cottage located within a predominantly residential area of Dunoon. The cottage is small comprising two rooms plus a bathroom. The internal arrangement and decor within the cottage have been retained to provide a homely character and feel to the premises, for those using the service.

The family mediation centre is used by families in dispute and by parents and their children who live apart. The service is used by all sectors of the community from professional to the unemployed and is a safe, neutral and homely environment where parents who no longer live with their children can meet them. All mediation sessions and contact visits are by appointment only and are supervised by staff at all times. The visiting and exiting times are staggered to avoid any possible clients meeting in the proximity of the premises. This service is offered throughout Argyll & Bute.

The centre operates from Monday to Saturday between the hours of 9 am and 5 pm. Contact and mediation sessions generally last between one to two hours. The applicants have submitted supporting information with this application and also a diary detailing the usage between 14th April 2010 and 31st July 2010. During this time, on average, there were only two sessions each day the centre was open but on some days there were three. It is only open when required and therefore some days it is not in use at all.

C. Road Network, Parking and Associated Transport Matters.

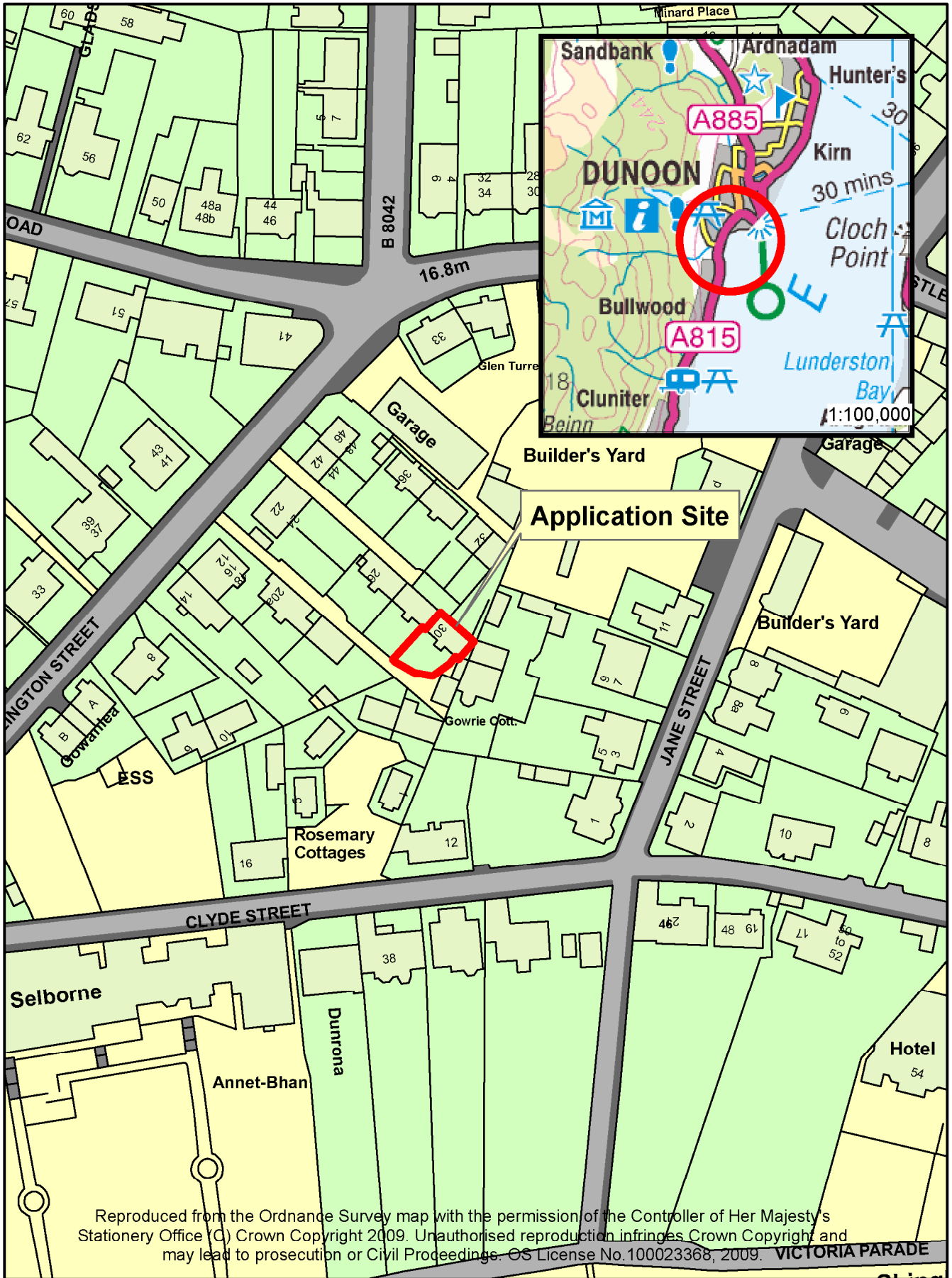
The property is accessed by a private lane from Wellington Street which also provides access to two other terraced properties. Representations received express concern over the adequacy of the existing access arrangements to support this new use. Furthermore, Roads & Amenity Services have expressed concern regarding the current access arrangement: this relates to the existing sightlines and the available parking and turning provision at this property. The applicants have been unable to increase the required sightlines at this private lane as the associated land falls outwith their control. With regards to car parking, Roads & Amenity Services have advised that the required parking standards are one space for each of the two neighbouring cottages and four spaces for the mediation centre (2 for staff and 2 for visitors). The total available parking is just four spaces, two of which belong to the mediation centre.

It is considered that, while the available parking is less than the number required by Roads & Amenity Services, there is no standard for car parking for such use in Appendix C of the Local Plan. The actual operation of the centre is in fact very low key and this arguably generates less vehicle movements than the lawful use of the property as a dwellinghouse. For the same reason, it is also considered that the use of the private access lane leading from Wellington Street will not intensify or generate such additional vehicle movement that would justify refusal of permission, in light of not being able to extend the available sightlines.

It is therefore not considered that there is a conflict with Policies LP TRAN 4 and LP TRAN 6 of the Argyll & Bute Local Plan.

D. Conclusion

While this new use is deemed to be consistent, in principle, with the Development Plan, there does remain some concern regarding the impact of this development should its operations expand or indeed change. To this end, it has been deemed prudent to recommend the grant of planning permission for one year only and controlling the days and hours of operation, along with the frequency of use.



Location Plan relative to Application Ref: 10/01036/PP

Date: 01.12.09

Scale: 1:1,250



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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.

Ref: ABH1/2009

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.

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