

MINUTES of MEETING of ARGYLL AND BUTE LOCAL REVIEW BODY held in the COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD on WEDNESDAY, 23 AUGUST 2017

Present:

Councillor Rory Colville (Chair)

Councillor Gordon Blair

Councillor George Freeman

Attending:

Charles Reppke, Head of Governance and Law (Adviser)

Fiona McCallum, Committee Services Officer (Minutes)

1. CONSIDER NOTICE OF REVIEW REQUEST: MODIFICATION OF EXISTING SHELLFISH (OYSTER) FARM (INCREASE IN CAPACITY BY 250 TRESTLES): PORT A'CHLAIDH, LOCH NA KEAL, ISLE OF MULL (REF: 17/0003/LRB)

The Chair welcomed everyone to the meeting and advised that his first task would be to establish if the Members of the Local Review Body (LRB) felt that they had enough information before them to come to a decision on the Review.

Councillor Freeman commented that this was only an entrance and appeared to be a minor amendment. He said that he certainly sympathised with the Applicant and felt that reading through the paperwork it would be beneficial to actually see the site.

Councillor Colville referred to the description of the road breaking up. He said that it was his own view that this went against the natural justice of someone. He advised that he would like to find out from the Applicant if he has tried to secure an agreement with the landowner. He also advised that he would like to know if the Roads Authority had any other powers to enable the works to be done. He said again that he felt this went against natural justice but he was not sure if there would be any benefit from having a site visit.

Councillor Blair commented that it was not often that Roads had any comments to make. He said that the standard the road was to be upgraded to appeared to be high which, he felt, seemed to be too much for a country road in Argyll.

Councillor Colville sought advice from Mr Reppke as to what the LRB were being asked to consider.

Mr Reppke advised that the Applicant was challenging condition number 2 of the planning permission which was asking for the access serving the site from the public road to be surfaced for a distance of 5m back from the channel line of the public road. He said that he understood the Chair's comments about natural justice. He suggested that the LRB could ask Planners for photographs showing the current condition of the road. He stressed that there was a need to ensure that road safety was not jeopardised. He added that the LRB could ask the Applicant if he had secured any agreement with the owner of the road and actual costs of the development could also be requested.

Councillor Freeman sought and received clarification from Mr Reppke on what was meant by the LRB taking a de novo approach.

Councillor Freeman advised that it was his concern that the proposal was not going to increase in anyway the traffic on this road and that, in his opinion, this was where it was unreasonable to ask the developer to upgrade that section of the road. He said that even although these were minor works, this was still unreasonable. He commented that he could not imagine there would be much traffic on the road. He said that he believed this was an unreasonable condition in the circumstances.

Councillor Blair confirmed that he was in agreement with what Councillor Freeman had said and advised that this was a rural location and not Sauchiehall Street in Glasgow. He said that it seemed to him that the Officers were making a recommendation without taking into account the wider economic issue. He added that there was a need to take a more holistic approach as a Council to encourage development. He advised that this was not a busy road environment and, in his opinion, a high end road was not required for this location.

Mr Reppke advised that Roads were asking for this condition on the grounds of road safety and that the LRB needed to make a judgement on that against the request for an upgrade to 5 metres of the road. He confirmed that the LRB would need to have a justification for removing a condition. He suggested that the LRB could enquire as to whether or not the Applicant had tried to get the main owner of the road to do this work or share costs as it appeared from the information submitted by the Applicant that the main owner made the most use of the road.

Councillor Freeman asked, if instead of undertaking a site visit, could the Planners be asked to provide photographs of the current condition of the road. He also asked if it would be possible to find out if Roads had any other authority/powers to get the road upgraded rather than using planning.

Councillor Blair advised that it would be useful to get a count of the number of vehicles using the road on any particular morning.

Decision

The Argyll and Bute LRB agreed:-

1. to request from Planning the following written information -
 - a) photographs taken at various angles showing the junction where the private road meets the (B8073) public road in order to show the current condition of the road surface which has prompted the inclusion of condition 2 attached to the Planning consent, and
 - b) the total cost of the overall development;
2. to request from the Applicant the following written information –
 - a) the total cost of upgrading the 5 metres of road, and
 - b) confirmation as to whether or not he has approached the land owner to discuss the works requested and to ascertain whether or not they would consider sharing costs;

3. to request from Roads the following written information –
 - a) a count of vehicles using the road on any particular morning, and
 - b) confirmation as to whether or not the Roads Authority has any powers under the Roads (Scotland) Act which can enable them to enforce a land owner to improve the surface of a private road; and
4. to adjourn the meeting and reconvene at the earliest opportunity.

The meeting of the Argyll and Bute Local Review Body reconvened on Thursday 5 October 2017 at 10.00 am in the Council Chamber, Kilmory, Lochgilphead

Present: Councillor Rory Colville (Chair)
Councillor Gordon Blair
Councillor George Freeman

Attending: Charles Reppke, Head of Governance and Law (Adviser)
Fiona McCallum, Committee Services Officer (Minutes)

The Chair established from the Members of the LRB that they had enough information before them to enable them to determine the case.

Councillor Freeman advised that having looked through the paperwork he had sympathy for the Applicant. He referred to comments made about additional vehicle movements and said that it was clear to him that there would not be any additional vehicle movements as a result of this development. He acknowledged that this was not a good road and commented that 51 vehicle movements was not too many. He pointed out that the Applicant has indicated that from an operational aspect including road use there would be no difference to how often the road would be used and that only a light van would be used. On this basis, Councillor Freeman said that he would find it difficult to justify condition 2 being retained and enforced as it has been advised by the Applicant that no additional vehicle movements will be made despite an increase in the trestles.

Councillor Colville confirmed that he was in total agreement with Councillor Freeman.

Councillor Blair advised that he was disappointed in the response from Roads as the survey information provided was not up to date. He said that he had sympathy for the Applicant and that he should not be held back from developing his business.

Councillor Freeman said that he agreed with Councillor Blair's comments about the traffic survey.

Councillor Colville submitted the following Motion for consideration.

I propose that the request for Review be approved on the following basis:-

The application is compliant with the listed development plan policies and supplementary guidance for aquaculture

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones
LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment
LDP 4 - Supporting the Sustainable Development of our Coastal Zone
Policy LDP 5 – Supporting the Sustainable Growth of Our Economy
Policy LDP 9 – Development Setting, Layout and Design
SG LDP AQUA 1 – Aquaculture Development
SG LDP ENV 12 – Impact on National Scenic Areas (NSAs)
Supplementary Guidance for Aquaculture
Scotland’s National Marine Plan (2015)
Scottish Planning Policy (2014)
Circular 1/2007 ‘*Planning Controls for Marine Fish Farming*’
‘*A Fresh Start – the Renewed Strategic Framework for Scottish Aquaculture*’ (2009)
‘*Siting & Design of Marine Aquaculture Developments in the Landscape*’ (SNH 2011)

Condition 2 as detailed in the original planning consent (17/00637/MFF) dated 12/05/2017 is removed for the reasons outlined below:-

It is noted that the Head of Roads and Amenity Services considers condition 2 relevant regardless of the extent of use of the access, however as there will be no material increase in vehicle movements or type of vehicle used and from the evidence of the photographs provided it is not considered that the granting of planning permission will further damage the existing road surface. In addition it is considered that the following material considerations further offset the requirement for remedial works to the bell mouth entrance as part of this planning application:-

Mull Community Council (17.03.17) – support the application.

Planning department comments

“This proposal involves the expansion of an established oyster farming site by the addition of a further 250 trestles. Following consultation, the application prompted a response from the Area Roads Engineer requiring remedial work to and surfacing of the bellmouth at the junction of the public road and the unadopted shared private access track serving the site. This access serves a single dwelling house, a fish farm shore base operated by the Scottish Salmon Company and the oyster farm and its associated shore base. During the course of the processing of the application, the applicant indicated that despite the addition of further trestles, no additional vehicle movements would be occasioned beyond those already associated with the operation of the existing site. Access would continue to be by light van and would not entail HGV movements. Such HGV movements as do take place are associated with the Scottish Salmon Company shore base rather than the shellfish farm.”

The adopted LDP provides:-

That additional weight is to be given to the economic benefits of proposals in Economically Fragile Areas, including the Isle of Mull. The addition of this facility will support existing employment at the site and lead to additional employment at certain stages in the process.

Therefore the consenting of this proposal without requiring any road improvements is consistent with policy given that there will be no material increase in traffic volume or the type of vehicle used .

The terms of the Motion were unanimously supported and the LRB resolved accordingly.

Decision

The ABLRB, having considered the merits of the application de novo, agreed that condition 2 attached to planning consent reference 17/00637/MFF be removed for the reasons detailed in the aforementioned Motion.

(Reference: Notice of Review and Supporting Documents and further information and comments, submitted)