



Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Customer Services
Executive Director: Douglas Hendry

Kilmory, Lochgilphead, PA31 8RT
Tel: 01546 602127 Fax: 01546 604435
DX 599700 LOCHGILPHEAD

14 February 2018

NOTICE OF MEETING

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held in the **COUNCIL CHAMBERS, KILMORY, LOCHGILPHEAD** on **WEDNESDAY, 21 FEBRUARY 2018** at **9:30 AM**, which you are requested to attend.

Douglas Hendry
Executive Director of Customer Services

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST (IF ANY)**
3. **CONSIDER NOTICE OF REVIEW REQUEST: ACHNAMARA, OLD SHORE ROAD, CONNEL, OBAN, PA37 1PT (REF: 17/0012/LRB)**
 - (a) Notice of Review and Supporting Documentation (Pages 3 - 30)
 - (b) Comments from Interested Parties (Pages 31 - 56)
 - (c) Comments from Applicant (Pages 57 - 78)

ARGYLL AND BUTE LOCAL REVIEW BODY

Councillor Rory Colville
Councillor Richard Trail

Councillor Alastair Redman

Contact: Fiona McCallum Tel: 01546 604392

This page is intentionally left blank

Ref: AB1

ARGYLL AND BUTE COUNCIL
www.argyll-bute.gov.uk/**

OFFICIAL USE
F McCallum
14 December
2017
Date Received

NOTICE OF REVIEW

Notice of Request for Review under Section 43(a)8 of the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

Important – Please read the notes on how to complete this form and use Block Capitals. Further information is available on the Council’s website.

You should, if you wish, seek advice from a Professional Advisor on how to complete this form.

(1) APPLICANT FOR REVIEW

(2) AGENT (if any)

Name

Name

Address

Address

Post Code

Post Code

Tel. No.

Tel. No.

Email

Email

(3) Do you wish correspondence to be sent to you or your Agent

(4) (a) Reference Number of Planning Application

17/01269/PP

(b) Date of Submission

10th May 2017

(c) Date of Decision Notice (if applicable)

2nd October 2017

(5) Address of Appeal Property

Achnamara
Old Shore Road
Connel

OBAN PA37 1PT

(6) Description of Proposal

Installation of Hot Tub and associated decking (part retrospective)

(7) Please set out detailed reasons for requesting the review:-

The letters of Objection, 6 in total 2 duplicate from our neighbour and 2 solicited from holiday rents who have stayed at the Boathouse Chalet, pertain to the Hot Tub and not in fact to the raised decking.

Notwithstanding the many erroneous statements made in the objection letters undue credence seems to have been placed on these objections, which I believe was the cause of the delay in arriving at a decision for my application. The initial verbal advice that i received from the Planning Office in Lochgilphead was that planning consent was not required for a Hot Tub.

On review of the Report of Handling I note that indeed the Hot tub installation is a permitted development.

This area of the Garden and Summer house was in frequent use prior to the installation of the decking and hot tub and since we have not extended the area or encroached any closer to our boundary I do not believe we should be required to partition part of our Garden at the behest of my neighbours.

The requirement "condition" of my planning permission to install a1.8m high close boarded or opaque barrier along the 3.4m of the "western side" of the decking is totally impractical if not down right dangerous. The decking is on the foreshore in front of a Summerhouse and on top of a pre existing (over 40 years) concrete plinth. This area is exposed to the full force of Westerly and Northerly gales which are not infrequent, with winds in excess of gale 8 and occasionally storm10.

The option of a garden or tree or shrub screen is not available as the area is rocky foreshore normally inundated at high water particularly at equinoctial spring tides.

If insufficient space please continue on a separate page. Is this attached?

Please tick to confirm

(8) If the Local Review Body determines that it requires further information on “specified matters” please indicate which of the following procedure you would prefer to provide such information:-

- (a) Dealt with by written submission
- (b) Dealt with by Local Hearing
- (c) Dealt with by written submission and site inspection
- (d) Dealt with by local hearing and site inspection

NB it is a matter solely for the Local Review Body to determine if further information is required and, if so, how it should be obtained.

(9) Please list in the schedule all documentation submitted as part of the application for review ensuring that each document corresponds to the numbering in the sections below:-

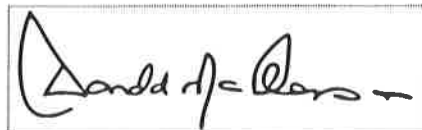
Schedule of documents submitted with Notice of Review **(Note if posting your paperwork 3 paper copies of each of the documents referred to in the schedule below must be attached):**

No	Detail
1	Photo of area 1
2	Photo of Area 2
3	Oban Office Report of Handling
4	
5	
6	
7	

8	
9	
10	

If insufficient space please continue on a separate page. Is this attached?
Please tick to confirm

Submitted by
(Please sign)



Dated 14th December 2017

Important Notes for Guidance

- (1) All matters which the applicant intends to raise in the review must be set out in or accompany this Notice of Review

- (2) All documents, materials and evidence which the applicant intends to rely on in the Review must accompany the Notice of Review **UNLESS** further information is required under Regulation 15 or by authority of the Hearing Session Rules.

- (3) Guidance on the procedures can be found on the Council's website -: <http://www.argyll-bute.gov.uk/planning-and-environment/local-review-body>

- (4) In in doubt how to proceed please contact 01546 604392/604269 or email: localreviewprocess@argyll-bute.gov.uk

- (5) Once completed this form can be either emailed to localreviewprocess@argyll-bute.gov.uk or returned by post to **Committee Services, (Local Review Body), Kilmory, Lochgilphead, Argyll, PA31 8RT**

- (6) You will receive an acknowledgement of this form, usually by electronic mail (if applicable), within 14 days of the receipt of your form and supporting documentation.

If you have any queries relating to the completion of this form please contact
Committee Services on 01546 604392/604269 or email: [localreviewprocess@argyll-
bute.gov.uk](mailto:localreviewprocess@argyll-bute.gov.uk)

For official use only

Date form issued

Issued by (please sign)



This page is intentionally left blank



This page is intentionally left blank

Argyll and Bute Council
Development & Infrastructure 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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 17/01269/PP
Planning Hierarchy: Local
Applicant: Mr Donald MacPherson
Proposal: Installation of hot tub with associated decking (retrospective)
Site Address: Achnamara, Connel, Argyll

DECISION ROUTE

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

- (i) **Development Requiring Express Planning Permission**
- Erection of raised decking and glazed balustrade (retrospective)
- (ii) **Other specified operations**
- Siting of hot tub and installation of associated equipment (retrospective)
-

(B) RECOMMENDATION:

That permission be Granted subject to the conditions and reasons contained in this report.

(C) CONSULTATIONS:

Environmental Health	04.08.2017	Comments have been provided.
Environmental Health Amended response	12.09.2017	No objections.

(D) HISTORY:

None

(E) PUBLICITY:

Not applicable

(F) REPRESENTATIONS:

(i) Representations received from:

- Four representations of objection from three addresses have been received:
- Jeanne Carss, The Moorings, Old Shore Road, Connel, PA37 1PT (letters dated 19.06.2017 and 21.06.2017).
- Stuart Carss, The Moorings, Old Shore Road, Connel, PA37 1PT (letters dated 19.06.2017 and 21.06.2017).
- Anne Jackson, 11 Munro St, Kirkcaldy, Fife, KY1 1PX (letter dated 04.06.2017).
- Carolyn Ballantyne, 4 Dalmanoy Crescent, Kirkcaldy, KY2 6SZ (letter dated 03.06.2017).
- In addition, the applicant has submitted a statement seeking to rebut several of the various objections, dated 30.06.2017

(ii) Summary of issues raised:

- The development is only 7.5 metres away from and overlooks the only area where anyone staying at the Boathouse Chalet can sit and enjoy loch views and observe the wildlife. As the decking screens are only glass and metal they provide no privacy at all. The development is immediately and clearly visible to anyone entering the Chalet grounds and when walking down to the seating area. This harms the privacy and amenity afforded to those users of the Boathouse Chalet and to the owners of the premises, their friends and their B&B customers. The development should be repositioned elsewhere within the garden ground of Achnamara and if this cannot be achieved, our privacy and amenity could be protected, in part, by the erection of a 2 metre high screen along the west elevation of the construction. We would have had no objection had the construction been sited at the opposite side of the applicant's property.

Comment: The distance between the hot tub / decked area and the Boathouse Chalet building itself is approximately 27 metres. The distance from an outdoor seating area used by occupants of the chalet and the new construction is approximately 14 metres. Some natural screening is currently provided between the new construction and the neighbouring Chalet. This vegetation is generally of small and more maintained species and does not completely screen the chalet or its seating area from the new construction. There is limited to no screening between the outdoor seating within the neighbouring property and the construction as this space is occupied by a drain outflow (potentially an old piped watercourse), rocks and part of the Loch Etive foreshore. There is no opportunity for the applicant to provide or maintain vegetation screening within this foreshore area due to the nature of the site. However, whilst In

this instance it is considered that the construction the subject of this planning application might result in some loss of privacy/amenity to the users of the adjoining premises it should be noted that the construction is sited within a private residential rear garden where such incidental residential development and use of garden ground would normally be expected. It is further anticipated that the construction the subject of this planning application would likely only be used periodically, it being an uncovered area within part of the rear garden ground of the property and its use therefore constrained by the weather. Given the existing lawful use of the immediately adjacent land as private residential garden ground with no limits upon the frequency of its use for incidental residential purposes it is not considered that the development the subject of this application would result in any materially harmful loss of privacy/amenity to the occupiers of the adjoining property which could reasonably or appropriately be protected by planning legislation through the refusal of this planning application. This considered opinion is strengthened by the fact that planning legislation could not control the private incidental residential use of any part of the garden ground, including those areas immediately adjacent to the common property boundary. Similarly, it should be noted that the only part of the development actually requiring planning permission in this case is the raised decking with its associated balustrade. The hot tub itself and its associated flue does not require planning permission. Nevertheless, it is considered that it would be appropriate in this case to seek to afford an enhanced level of privacy between the application site and its neighbour by requiring the provision of a 1.8 metre high close-boarded (or similar) screen fence along the western side of the raised deck. This can be achieved through then use of an appropriate planning condition.

- Concerns regarding noise disturbance to the users of the Boathouse Chalet with reports of nuisance being caused by loud music being played late into the evening. This 'evening entertaining' could be conducted elsewhere within the garden area. It is therefore requested that a time limit be set for the use of the hot tub and decking area.

Comment: The application is for a householder development within the existing settlement and within part of a private garden area. It is not considered that the proposed development will generate significantly greater amounts of noise or disturbance to the occupiers of the adjacent dwellinghouse and garden than could reasonably be expected from any situation where two private gardens share a common boundary. In addition, it is recognised that the applicant could develop a significant part of his land adjacent to this common boundary with similar decking/seating areas and with other incidental residential outbuildings and structures without requiring planning permission. Indeed, several such structures already exist within this part of the applicant's rear garden ground. The Council's environmental health officer has examined the proposed development in detail and has concluded that its use is not likely to result in a material noise nuisance. Accordingly, restricting noise level or use via a condition of consent is not considered reasonable or proportionate to any noise impacts which might be generated. Any statutory noise nuisance, either from the development the subject of this planning application or from elsewhere within the application site is capable of being controlled through

appropriate environmental health legislation.

- Concerns regarding 'disco lights' being used inside a building.

Comment: It is not fully understood what this comment refers to, however as the current application does not propose the erection of a 'building' it is assumed that this comment refers to one of the two existing residential outbuildings that directly adjoin the site of the proposed construction. Both of these existing outbuildings are lawful and form incidental development within the garden ground of a private residential dwellinghouse. Their use does not fall to be considered as part of the current planning application and any statutory light pollution nuisance is capable of being controlled through appropriate environmental health legislation.

- Concerns that whenever the hot tub is to be used, the heating of its water results in acrid-smelling smoke being pumped out of the hot tube flue, polluting the air even on a clear, sunny day which is very unpleasant and can blow across to our property meaning that we cannot leave our windows open.

Comment: The distance from the hot tub flue and the Boathouse Chalet building is approximately 27 metres. The distance from the outdoor seating area used by occupants of the Chalet and the hot tub flue is approximately 14 metres. The hot tub is heated by means of a wood fuelled burner. Environmental Health have commented that whilst firing the hot tub boiler there is a potential to give rise to a small amount of wood smoke, however this is unlikely to give rise to any material nuisance to neighbouring receptors. Environmental Health further advise that should the operation of the hot tub boiler result in any statutory odour nuisance, this is capable of being controlled through their legislation. Notwithstanding this, it is reiterated that the hot tub itself and its associated boiler and flue do not actually require planning permission.

- Concerns that the hot tub is drained directly into Loch Etive which is close to a fresh water stream which is a home to wildlife. We are concerned that hot tubs are regularly cleaned using chemicals to limit the risk of infections and there may be environmental repercussions from draining these directly into the loch. Are SEPA aware of this? On the Gov.UK website it states that an environmental permit is required before draining waste water into open water. We do not know if the applicant has the necessary consent for this.

Comment: Any drainage from the hot tub into open water could be a matter for control though appropriate SEPA legislation and this would be a matter for them to investigate and enforce if necessary. However, and notwithstanding this, it is again noted that the hot tub itself does not require planning permission (for reasons discussed in Section P below). The applicant has commented that he does not believe that SEPA legislation applies to domestic installations and that he is not, in any case, draining chemicals into Loch Etive. In addition, the applicant asserts that the 'fresh water stream' referred to by objectors is, in fact, a ditch which takes water from Old Shore Road plus the run-off water from most of the properties on the south side of this road into the Loch. The applicant

comments that this drain is frequently contaminated by grey water.

- The objector believes the applicant's guests use the hot tub and the applicant has a duty of care and regular logs have to be kept regarding the temperature and condition of the water etc. so these can be inspected by Environmental Health.

Comment: This is noted but is not a material planning consideration in the determination of this planning application.

(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 eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

-
- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No

-
- (J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) List of all Development Plan Policy considerations taken into account in assessment of the application.**

'Argyll and Bute Local Development Plan' (Adopted March 2015)

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones

LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment

LDP 9 – Development Setting, Layout and Design

Supplementary Guidance

SG LDP ENV 14 - Landscape

SG 2 – Sustainable Siting and Design Principles

SG LDP BAD 1 – Bad Neighbour Development

(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.

- Argyll and Bute Sustainable Design Guidance, 2006
- Scottish Planning Policy (SPP)
- Third party representations
- The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended)

(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

This retrospective planning application seeks the retention of a hot tub and its associated equipment and a surrounding area of raised decking with associated balustrade located within the private rear garden ground of a residential dwellinghouse, Achnamara, Connel in Argyll.

The hot tub itself has a diameter of approximately 2 metres and a height of 1.1 metres and rests upon a long-established concrete slab which forms the existing ground level of this part of the garden and is located to the rear of an existing summerhouse outbuilding and adjacent to a larger boathouse building, both of which also occupy the rear garden ground of this residential property and both of which are lawful. The siting of the hot tub plus its associated boiler and flue upon the existing concrete slab benefits from 'deemed planning permission' by virtue of the provisions of Class 3A of Part 1 of Schedule 1 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended). It therefore does not require planning permission.

Surrounding the hot tub is a timber construction consisting of an area of raised

decking with its sides enclosed by timber boarding and its platform level raised to just below the top of the hot tub. This decking covers an area of approximately 26 square metres and is raised to a height of 0.95 metres above the pre-existing concrete plinth. The decked area overlooks the shoreline at Rudha Riabhach, Loch Etive and is located close to the side boundary of the application property. The applicant has also installed a 1.1 metre high stainless steel balustrade with glass panels to the north and east elevations of the raised deck. This will give the raised deck an overall height of 2.05 metres.

Class 3D of Part 1 of Schedule 1 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended) also grants 'deemed planning permission' for the construction of raised decks or other platforms within the rear garden ground of residential properties but, in this case, this is limited to decking raised no more than 0.5 metres above ground level and with a maximum height including any handrail or balustrade of 2.5 metres. Therefore the decking construction requires planning permission but wouldn't if lowered in height by 45 cm.

In terms of the adopted Argyll and Bute Local Development Plan the site is located within the minor settlement village of Connel wherein key planning policy LDP DM 1 gives encouragement to appropriate scales of development; in this case not exceeding 'small scale' and subject to compliance with other relevant policies. 'Small scale' development is defined according to development type and whilst development within the curtilage of residential properties is not explicitly defined within the LDP, for other types of development this often encapsulates building development with a footprint area not exceeding 200 square metres or residential development not exceeding 5 dwelling units. The development the subject of this planning application is comfortably within any reasonable definition of 'small scale'.

The proposed development has attracted several objections which are summarised and assessed above. Whilst the proposed development does have some limited potential to affect the privacy and amenity of the occupiers/users of the adjacent property, it is not considered that these impacts would be materially harmful to an extent which would warrant the refusal of this planning permission given the assessment of the concerns raised. In this regard, it is considered that the proposed development would comply with the relevant provisions of the Local Development Plan, namely supplementary guidance SG 2 and SG LDP BAD 1 and with all other material planning considerations.

Supplementary Guidance SG LDP BAD 1 – Bad Neighbour Development states that certain types of development will only be permitted subject to certain criteria, primarily that they should have no unacceptable adverse effects on the amenity of neighbouring residents. Whilst the proposed development would not ordinarily fall within any of the specifically identified categories of 'bad neighbour development' it also includes developments which will affect residential property by reason of fumes, noise, smoke, artificial lighting etc or developments which will alter the character of an area of established amenity. Having carefully assessed the proposed development, it is not considered that it will either affect residential property or alter the established character of the area to any unacceptable extent.

The raised decked area has been designed and constructed so as to be visually sympathetic to the dwellinghouse and its surrounding area and is of a suitable form and scale with acceptable finishing materials which will ensure it will not dominate or detract from the dwellinghouse or its setting within the wider landscape. To address concerns related to issues of privacy a minimum of a 1.8 metre high screening / fence along the west boundary of the deck is recommended to be installed. This will

provide additional privacy to the seating area of the neighbouring properties known as the Boathouse Chalet and The Moorings. Subject to conditions of consent, the proposal complies with the terms of Policies LDP 3 which seeks to protect and conserve the built, human and natural environment against inappropriate development; policy LDP 9 which requires developers to produce and execute an appropriately high standard of design and Supplementary Guidance SG LDP ENV 14 and SG 2 which seek to ensure that development does not have a significant adverse impact on the character of the landscape or on the privacy and amenity of the occupants of neighbouring property.

The proposed development complies with all of these key policy aims and is considered acceptable.

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

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

The proposed development is within the 'settlement zone' and accords with the relevant provisions of the Local Development Plan and with all other material planning considerations including those concerns raised by third parties.

(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: Judith Stephen **Date:** 29.09.2017

Reviewing Officer: Tim Williams **Date:** 29.09.2017

Angus Gilmour
Head of Planning & Regulatory Services

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 17/01269/PP

1. The proposed development shall be carried out in accordance with the details specified in the application form dated 09 May 2017 and the approved drawings numbered 1 of 6 to 6 of 6 and stamped approved by Argyll and Bute Council.

Reason: In order to ensure that the proposed development is carried out in accordance with the details submitted and the approved drawings.

Note to Applicant:

- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 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.
2. Notwithstanding Condition 1, details shall be submitted to and approved in writing by the Planning Authority of an additional means of screening the development by the construction of an opaque barrier of at least 1.8 metres in height to be constructed along the western side of the raised decking hereby approved. The approved screening shall thereafter be installed in the position agreed within three months of the date of this permission, i.e. by 1st January 2018 and shall thereafter be retained.

Reason: In order to protect the privacy and amenity of the neighbouring property.

APPENDIX TO DECISION APPROVAL NOTICEAppendix relative to application **17/01269/PP**

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**
- (B) Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing. **No**
- (C) The reason why planning permission has been approved:

The proposed development is within the ‘settlement zone’ and accords with the relevant provisions of the Local Development Plan and with all other material planning considerations including those concerns raised by third parties.

CHECK SHEET FOR PREPARING AND ISSUING DECISION

Application Number	17/01269/PP
Decision Date	29.09.17
Issue Latest Date	
Decision	Grant with Conditions & Reasons

Date signed by ATL

Don't Issue Decision	Tick if relevant	Action (tick)	Date sent
Notification to Scottish Ministers			
Notification to Historic Scotland			
Section 75 Agreement			

Revocation		
------------	--	--

Issue Decision		✓	<i>Tick</i>	Standard Conditions/Notes to include			
Tick	Dev/Decision Type		Time Scale*	Initiation	Completion	Display Notice	
			Only use if PP/AMSC & Granted				
	Local – Sch.3 – Delegated						
✓	Local – Delegated		✓	✓	✓		

*standard time condition not required if application retrospective.

Include with Decision Notice	
Notification of Initiation Form	✓
Notification of Completion Form	✓
Customer Satisfaction Survey	✓

Notify of Decision	
Objectors/Contributors	
Ongoing Monitoring – priorities:	

Total residential units FP3 (uniform)			
Houses		Sheltered	
Flats		Affordable	

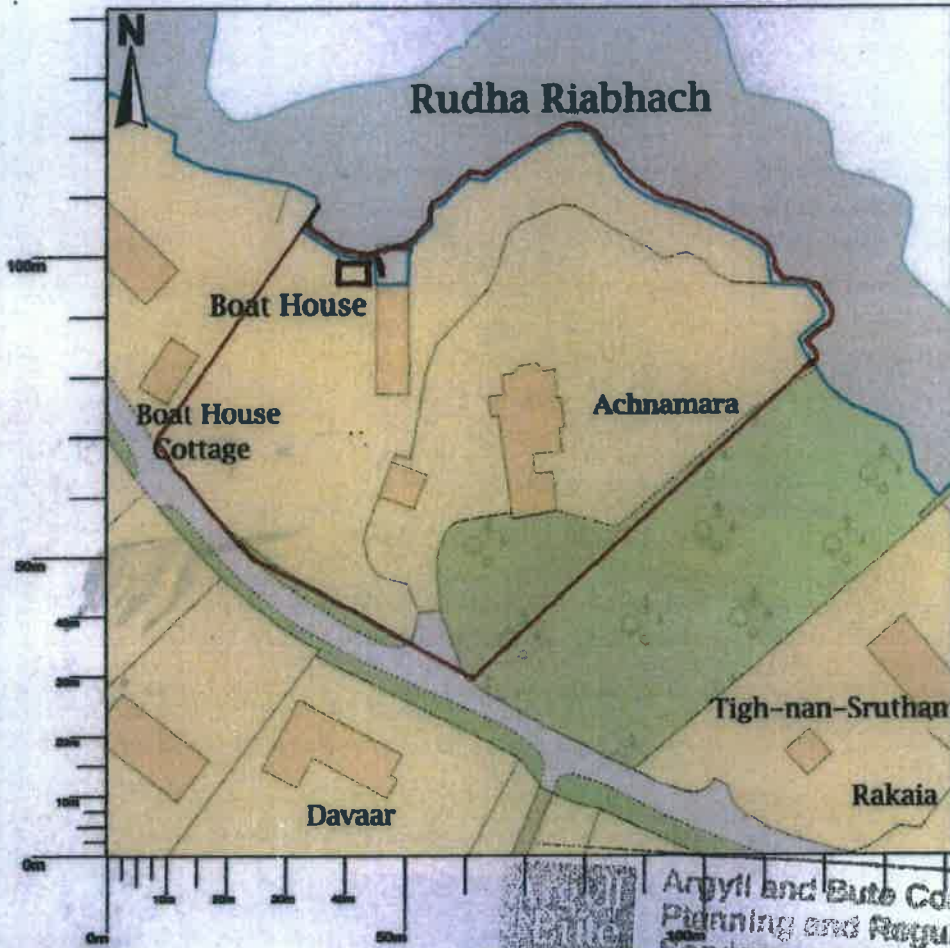
This page is intentionally left blank



**UK
Planning
Maps**



Achnamara, Connel, Oban, PA37 1PT



ARGYLL AND BUTE COUNCIL
 This plan been APPROVED by the
 PLANNING AUTHORITY and MUST be read in
 conjunction with the Planning Conditions of
 Consent No:
17/01269/PP

Angus J. Stewart
 Head of Planning and Regulatory Services

Argyll and Bute Council
 Planning and Regulatory
 Services

Application ref no: 17/01269/PP
 Date received: 13.06.17

Plan no: 1 of 6
 PO. Initials: JS

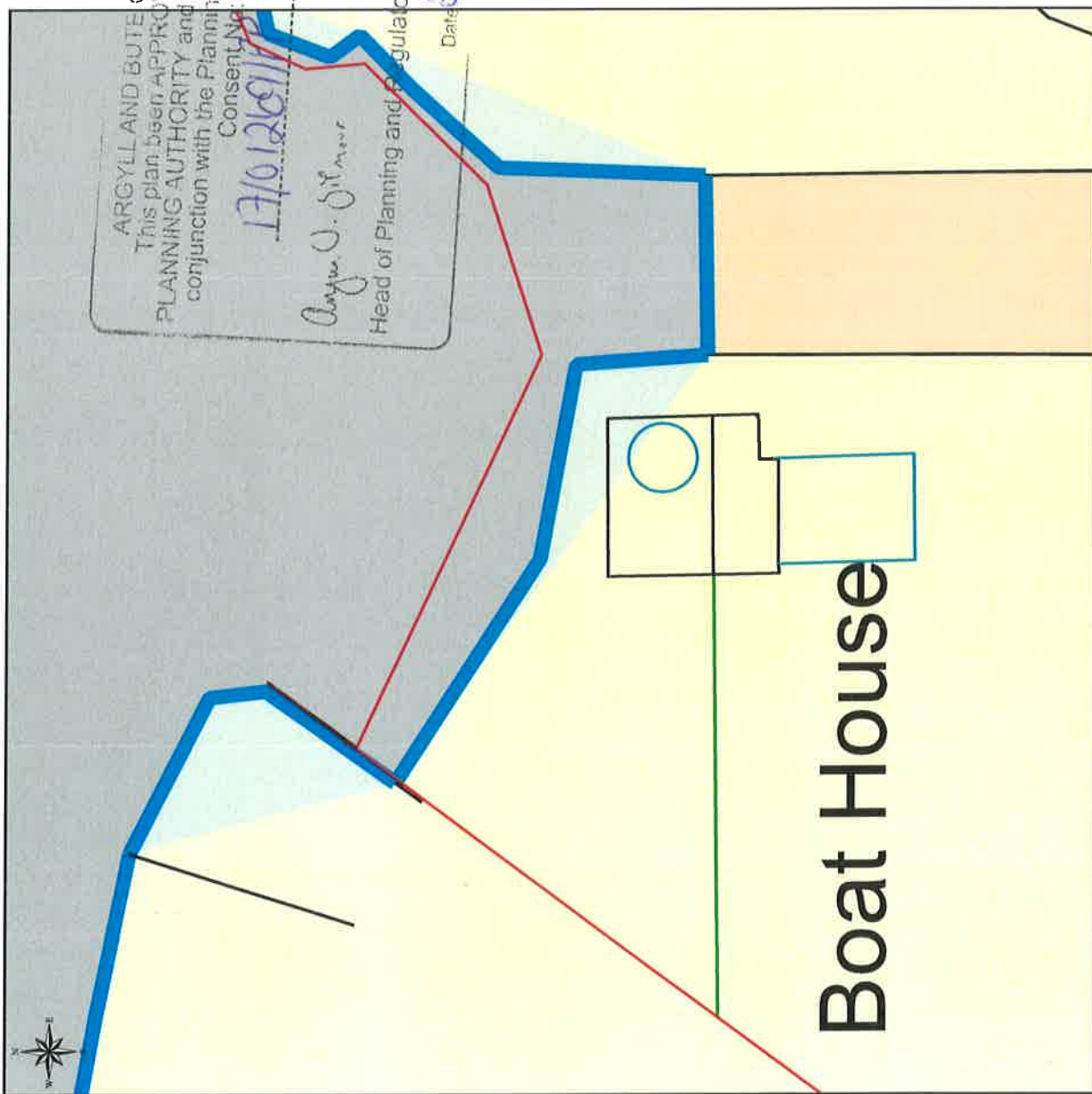
Map shows area bounded by: 190395.3, 734067.9, 190536.7, 734208.7 (at a scale of 1:1250) The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Produced on 09 May 2017 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey. © Crown copyright 2017. Supplied by UKPlanningMaps.com a licensed Ordnance Survey partner (100054135). Unique plan reference: p2b/160578/220674

Ordnance Survey and the OS Symbol are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain. UKPlanningMaps logo and other designs are Copyright © copla ltd 2017

AA

Location Plan PA37 1PT



Argyll and Bute Council
Planning and Regulatory Services

Application ref no: 17/01269/11
Date received: 13.6.17

Plan no: 2 of 6
P.O. Initials: SS

This Plan includes the following Licensed Data: OS MasterMap Colour PDF Location Plan by the Ordnance Survey National Geographic Database and incorporating surveyed revision available at the date of production. Reproduction in whole or in part is prohibited without the prior permission of Ordnance Survey. The representation of a road, track or path is no evidence of a right of way. The representation of features, as lines is no evidence of a property boundary. © Crown copyright and database rights, 2017. Ordnance Survey 0100031673

Scale: 1:200, paper size: A4

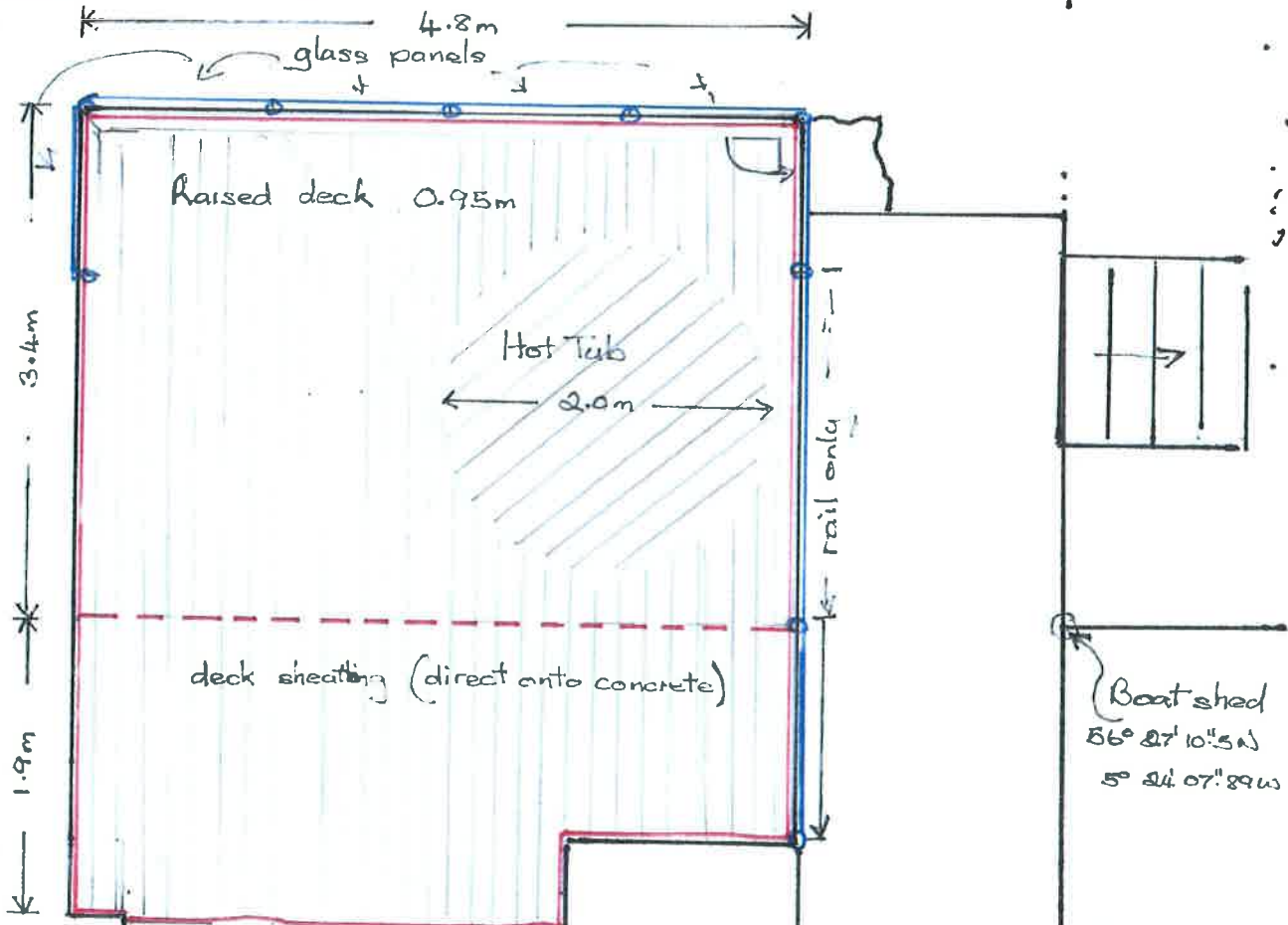
A4

plans ahead by emapsitx

ACHINMARA
OLD SWIRE ROAD
PA371PT

SHORE Front Hot Tub &
decking

Plan view



Blue Hat

Boat shed
56° 27' 10.5\"/>

Argyll and Bute Council
Planning and Regulatory
Services

Application ref no: 17/01269/PP
Date received: 13.6.17

Plan no: 4 of 6
P.O. Initials: SS

ARGYLL AND BUTE COUNCIL
This plan been APPROVED by the
PLANNING AUTHORITY and MUST be read in
conjunction with the Planning Conditions of
Consent No:
17/01269/PP

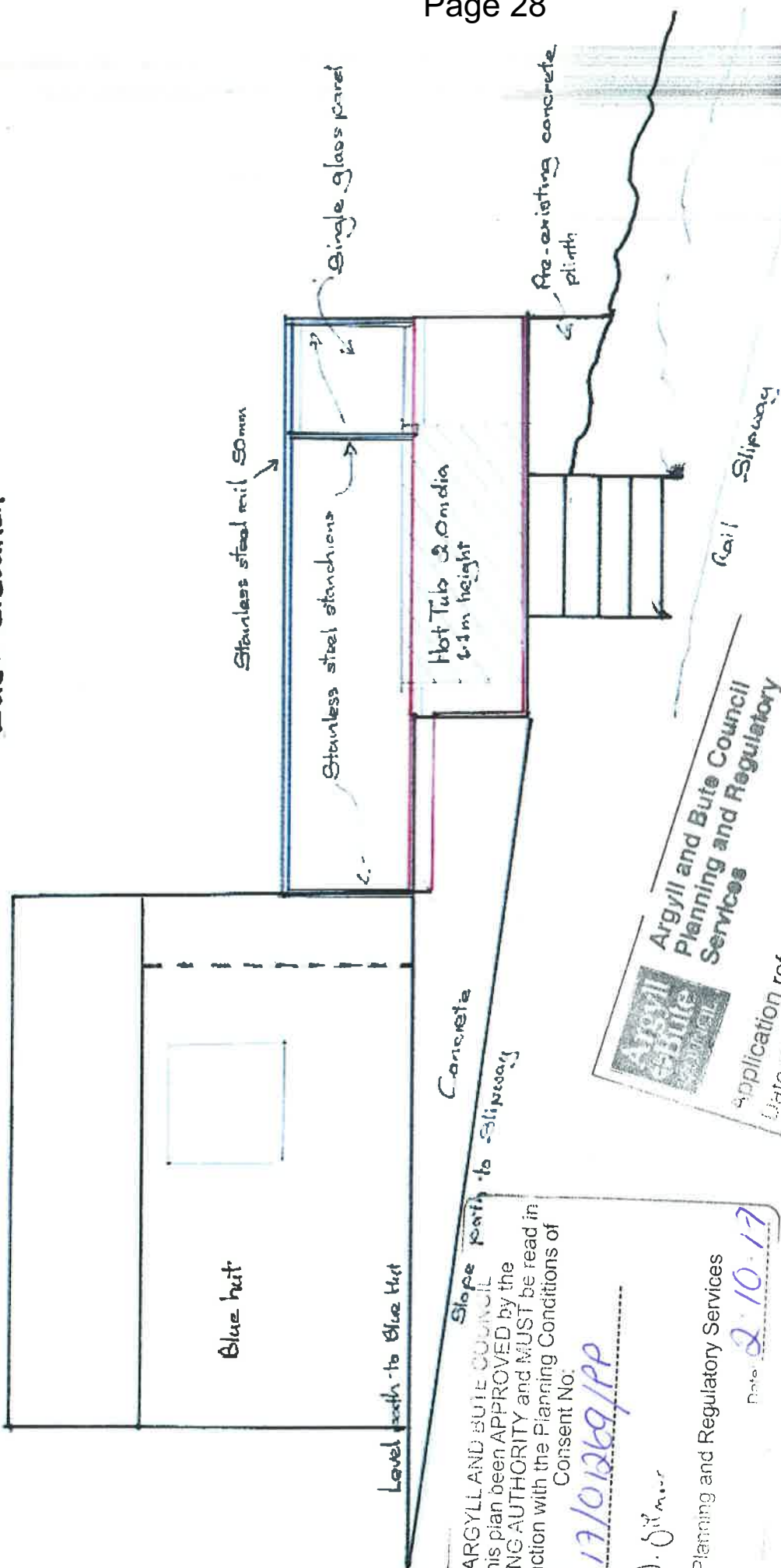
Argyll O. Dillamore
Head of Planning and Regulatory Services
Date: 2.10.17

2.0 m

Scale 50:1

A4

East elevation



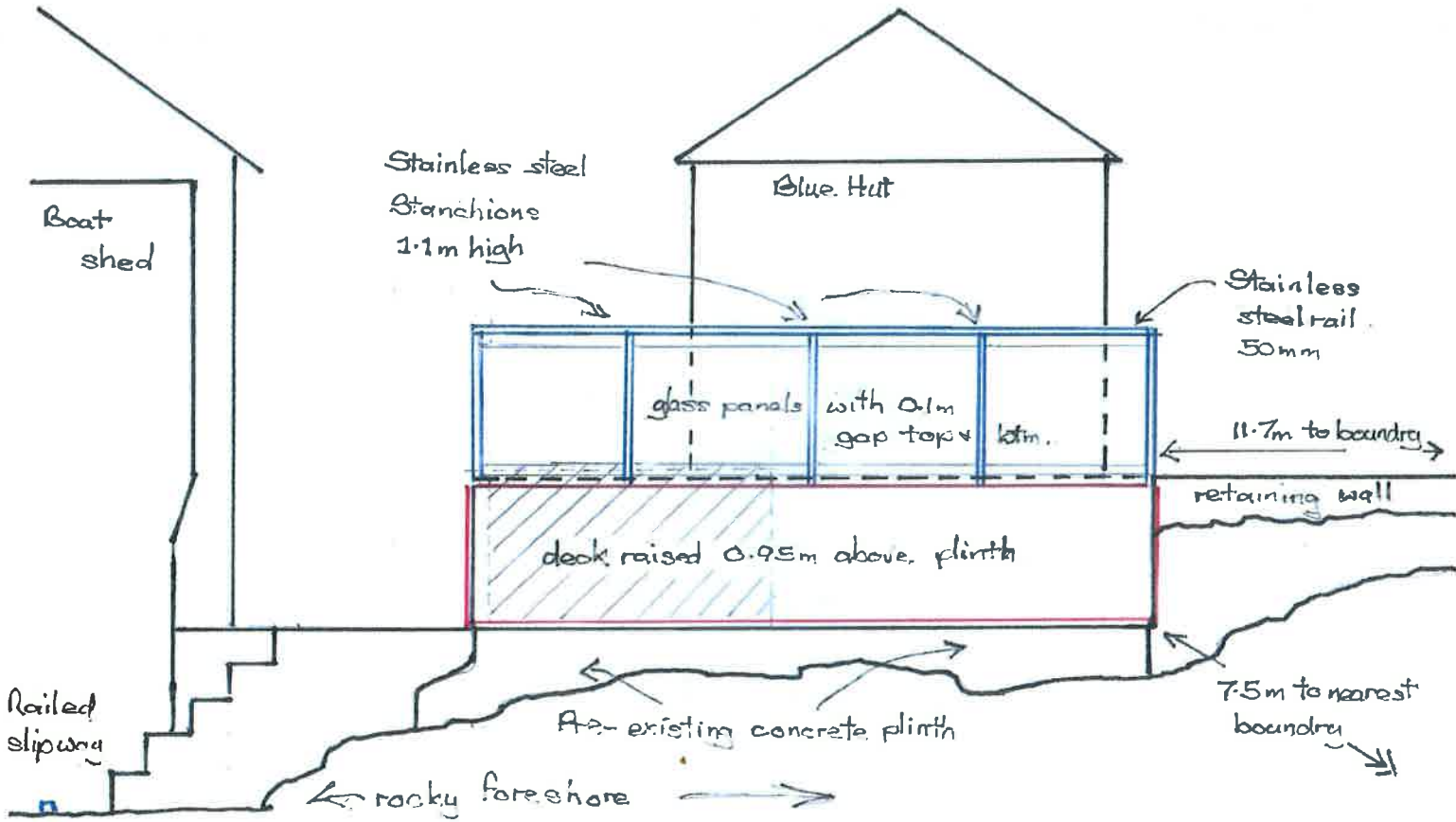
(A4)

ARGYLL AND BUTE COUNCIL
 This plan has been APPROVED by the
 PLANNING AUTHORITY and MUST be read in
 conjunction with the Planning Conditions of
 Consent No:
17/01269/PP
 Angus J. Gilman
 Head of Planning and Regulatory Services
 Date: 2.10.17

Argyll and Bute Council
 Planning and Regulatory
 Services
 Application ref no: 17/01269/PP
 Date received: 13.09.17
 Man no: 506
 Initials: JJ

Achnamara Old Shore Rd. Connell.
 Hot tubs raised decking 08.05.2017
 Scale 50:1 6 1 1 2

North elevation



Argyll and Bute Council
Planning and Regulatory
Services

Application ref no: 17/0269/PP
Date received: 13.6.17

Plan no: 6 of 6
P.O. Initials: SS

Achnamara, Old Shore Rd, Connel

Hot Tub & Raised decking 22.05.2017

Scale, 50:1



ARGYLL AND BUTE COUNCIL
This plan been APPROVED by the
PLANNING AUTHORITY and MUST be read in
conjunction with the Planning Conditions of
Consent No:
17/0269/PP

Angus J. Gilmore
Head of Planning and Regulatory Services
2.10.17

A4

This page is intentionally left blank

PLANNING APPLICATION NUMBER 17/01269/PP - REVIEW – ACHNAMARA, CONNEL

We refer to the above review. We would comment that, after looking at all the relevant information and facts, an experienced Planning Officer concluded that screening should be erected on the western elevation of the new decking/hot tub area and this was agreed by the Planning Committee. Nothing has changed.

With reference to paragraph 4, we would point out that the area previously used was 1.9 metres wide and this was increased by approximately two thirds and elevated (the existing concrete plinth was only occasionally used and was not as visible due to its height).

With reference to paragraph 5, we are wondering why, if the decking hot tub area is so exposed, that it was decided to locate it in this area. We would point out that we have spent approximately £500 on plants and fencing to try to screen the Boathouse Chalet lower garden seating area from the new decking area and this is even more exposed and closer to the sea.

We have a very well established self catering property and people from all over the world come to stay, many with young children and elderly relatives. Neither they nor we believe that it is acceptable for semi naked people (including children) to be in view in such close proximity and overlooking our property.

Sincerely

Jeanne and Stuart Carss

21/12/17

This page is intentionally left blank

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

17/0012/LRB

Removal of Condition 2 of planning permission ref 17/01269/PP (requirement for an additional means of screening the development by the construction of an opaque barrier of at least 1.8 metres in height to be constructed along the western side of the raised decking)

**Installation of hot tub with associated decking (retrospective)
Achnamara, Connel, Argyll.**

15th of December 2017

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Mr Donald MacPherson ('the appellant').

Planning permission 17/01269/PP for the Installation of hot tub with associated decking (retrospective), Achnamara, Connel, Argyll ("the appeal site") was granted subject to conditions under delegated powers on 02 of October 2017.

Condition 2 of this grant of planning permission has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The site and the development the subject of this review is as described within the attached report of handling (Appendix 1). The sole reason for review is the inclusion of a planning condition (Condition 2) attached to the approval of retrospective planning permission the subject of planning application reference 17/01269/PP, which states:

"Notwithstanding Condition 1, details shall be submitted to and approved in writing by the Planning Authority of an additional means of screening the development by the construction of an opaque barrier of at least 1.8 metres in height to be constructed along the western side of the raised decking hereby approved. The approved screening shall thereafter be installed in the position agreed within three months of the date of this permission, i.e. by 1st January 2018 and shall thereafter be retained".

Reason: In order to protect the privacy and amenity of the neighbouring property.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Act, regard is to be had to the development plan. The determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is not considered that any additional information is required in light of the appellant's submission. The issues raised were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small scale, has no complex or challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANT'S SUBMISSION AND STATEMENT OF CASE

Comments on the Appellant's Submission:

The appellant contends that there were six letters of objection in total of which two were duplicate from the neighbour and two of which were solicited from holiday rentals, which only pertained to the Hot Tub and not in fact to the raised decking.

Comment: This request for review relates solely to the Planning Authority's decision to grant planning permission subject to conditions, one of which (Condition 2) is deemed unacceptable by the appellant. Notwithstanding this, and for clarity, the Planning Authority received four representations of objection from three separate addresses with two of the correspondents submitting two representations apiece. The representations received and the issues raised are summarised within the attached report of handling.

A further letter of objection has been received in response to this current LRB appeal. This letter, dated 21st December 2017, is from an existing interested party and is attached as an appendix to this statement. It raises no new issues.

The appellant contends that the undue credence placed on the objections received was the cause of the delay in the department arriving at a decision for the planning application.

Comment: This request for review relates solely to the Planning Authority's decision to grant planning permission subject to conditions, one of which (Condition 2) is deemed unacceptable by the appellant. Notwithstanding this, and for clarity, the Planning Authority carefully considered the points raised in the representations received and all other material planning considerations. The determining factors in this application were complicated by the retrospective nature of the development together with difficulties in arriving at an appropriate compromise position. Whilst it is accepted that these factors lead to unfortunate processing delays, it is not accepted that undue and inappropriate weight was afforded third party representations.

The appellant contends that the Report of Handling states that the installation of the Hot Tub is permitted development.

Comment: This request for review relates solely to the Planning Authority's decision to grant planning permission subject to conditions, one of which (Condition 2) is deemed unacceptable by the appellant. Notwithstanding this, and for clarity, the Report of Handling states that the hot tub plus its associated boiler and flue upon the existing concrete slab benefits from 'deemed planning permission' by virtue of the provisions of Class 3A of Part 1 of Schedule 1 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended). It therefore does not require planning permission. However, the raised decking which surrounds the hot tub does require planning permission as is explained in appropriate detail within the attached report of handling.

The appellant contends that the area of garden and the summer house was in frequent use prior to the installation of the decking and hot tub and as the area has not been extended or encroached any closer to the boundary the appellant does not believe he should be required to partition part of his garden at the behest of his neighbours.

Comment: Although this specific area of garden ground may have been in frequent use prior to the partially retrospective installation of the decking and hot tub the subject of this review, it was considered that the development proposed would lead to a material increase in the frequency and type of use of this part of the garden. The development was appropriately assessed and a decision was eventually reached to grant retrospective planning permission subject to a number of planning conditions.

The appellant contends that Condition 2 attached to the planning permission requiring the installation of a 1.8m high close boarded fence or opaque barrier along the western side of the decking is 'totally impractical if not downright dangerous'. The appellant states that the decking is on the foreshore in front of an existing summer house and on top of a pre-existing (for over 40 years) concrete plinth. The appellant states that this area is exposed to the full force of Westerly and Northerly gales which are not infrequent, with winds in excess of gale 8 and occasionally storm 10.

Comment: Planning permission was granted for the development subject to a planning condition requiring a short length of opaque screening to be erected along one side of the consented raised decking. The planning condition requires details of the proposed screen to be submitted to and approved in writing by the Planning Authority. Such required details may take account of prevailing weather conditions and the Planning Authority do not consider that such a screen capable of withstanding prevailing winds could not be erected.

The appellant contends that the option of a garden or tree or shrub screen is not available as the area is rocky foreshore normally inundated at high water particularly at equinoctial spring tides.

Comment: This is not an 'option' that is available to the appellant under the provisions of this review and, specifically, the requirements of Condition 2. The Planning Authority might have been prepared to negotiate an alternative means of appropriate screen planting instead of the opaque screen construction required by Condition 2, though the correct mechanism to have secured this would have been through the submission of a planning application to vary the wording of Condition 2. The appellant appears, however, to be stating here that he is not prepared to consider such a compromise approach.

Statement of Case in Respect of Condition 2:

Circular 4/1998, Annex A, sets out Government policy in relation to the use of planning conditions. Conditions on planning permissions may be imposed only within the parameters of the six legal tests prescribed by Circular 4/1998. These 'six tests' are considered in turn:

Necessary: A planning condition must be 'necessary' to the extent that planning permission would be refused if such a condition was not imposed.

In this case, it is considered that the contested planning condition is necessary in that it seeks to ensure the provision of an appropriate visual screen between the development and the adjacent residential/business property given the close proximity of the development site to the garden ground of the adjacent property, the elevated

nature of the development with respect to the adjacent property and the type of use of the development proposed. The planning condition is required in order to appropriately screen the development and to attenuate the privacy and amenity concerns raised by third parties and accepted (in part) by the Planning Authority.

Relevant to planning: A planning condition can only be imposed where it relates to planning objectives. A planning condition must not be imposed where it seeks to secure the provision of some other Local Authority function or else relates to other specific planning or non-planning controls.

In this case, the contested planning condition seeks to address a material planning objective, namely that developments should not result in material harm, either due to their unacceptable visual impact and/or to the privacy and/or amenity of the occupiers or users of adjacent land. The contested planning condition, as worded within the planning permission the subject of this appeal, seeks to appropriately and proportionately control the visual impact of the proposed development together with its impact upon the privacy and amenity of the neighbouring properties, namely the Boathouse Chalet and The Moorings. Such control is directly relevant to planning and is not capable of being fully addressed by other legislation.

Relevant to the development to be permitted: A planning condition must fairly and reasonably relate to the development the subject of the planning permission.

In this case, the contested planning condition clearly relates specifically to the development the subject of the planning condition in that it requires the physical alteration of the structure the subject of the planning application; in this case the raised decking.

Ability to enforce: A planning condition should not be imposed if it cannot be enforced.

In this case, the contested planning condition requires three things: Firstly, the submission, assessment and (ultimately) approval of details; Secondly, the implementation of those approved details and; Thirdly, the retention of the approved and implemented works.

Each of the three components of the contested planning condition are readily capable of enforcement through existing planning legislation should they not be complied with (either in whole or in part). In this case, failure to comply with the planning condition will be subject to investigation by officers, through site inspection and negotiation, and, where deemed necessary and proportionate, through the serving of a 'breach of condition notice' as prescribed by relevant planning legislation.

Enforcement of this condition would be both practical, in that it would be a simple matter to detect a breach, and reasonable, in that the owner of the land can reasonably be expected to comply with it.

Precise: A planning condition must be written in a way that makes it clear to the applicant and others what must be done to comply with it and by when.

In this case, the contested condition is written in a way that makes it appropriately clear what is required and by when.

Reasonable: Is the condition reasonable?

In this case, it is considered that the contested condition is wholly reasonable. The requirement for the applicant/developer to submit details for assessment by the Planning Authority affords some scope for limited negotiation and, in this regard, is not considered unduly prescriptive or otherwise fundamentally onerous.

The contested planning condition is not considered unduly restrictive and neither would it nullify the benefit of the planning permission to which it relates. The planning condition would not prevent the use of the development or place upon it a financial burden of such severity as to make the development reasonably incapable of implementation. In addition, the condition does not require works on land or buildings to which the applicant has no interest or control at the time when planning permission was granted. Neither does the condition require the actions or consent of any third party or authorisation by anyone other than the Planning Authority.

CONCLUSION

Taking account of the above, it is respectfully requested that the application for review be dismissed.

LIST OF APPENDICES

The following appendices accompany this Statement:

- Appendix 1.** Report of Handling – Planning Application 17/01269/PP
- Appendix 2.** Representation to Local Review Body by Jeanne and Stuart Carss, dated 21.12.17
- Appendix 3.** Site photographs

APPENDIX 1

Argyll and Bute Council
Development & Infrastructure 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 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 17/01269/PP
Planning Hierarchy: Local
Applicant: Mr Donald MacPherson
Proposal: Installation of hot tub with associated decking (retrospective)
Site Address: Achnamara, Connel, Argyll

DECISION ROUTE

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

- (i) **Development Requiring Express Planning Permission**
 - Erection of raised decking and glazed balustrade (retrospective)

 - (ii) **Other specified operations**
 - Siting of hot tub and installation of associated equipment (retrospective)
-

(B) RECOMMENDATION:

That permission be Granted subject to the conditions and reasons contained in this report.

(C) CONSULTATIONS:

Environmental Health	04.08.2017	Comments have been provided.
Environmental Health Amended response	12.09.2017	No objections.

(D) HISTORY:

None

(E) PUBLICITY:

Not applicable

(F) REPRESENTATIONS:

(i) Representations received from:

- Four representations of objection from three addresses have been received:
- Jeanne Carss, The Moorings, Old Shore Road, Connel, PA37 1PT (letters dated 19.06.2017 and 21.06.2017).
- Stuart Carss, The Moorings, Old Shore Road, Connel, PA37 1PT (letters dated 19.06.2017 and 21.06.2017).
- Anne Jackson, 11 Munro St, Kirkcaldy, Fife, KY1 1PX (letter dated 04.06.2017).
- Carolyn Ballantyne, 4 Dalmanoy Crescent, Kirkcaldy, KY2 6SZ (letter dated 03.06.2017).
- In addition, the applicant has submitted a statement seeking to rebut several of the various objections, dated 30.06.2017

(ii) Summary of issues raised:

- The development is only 7.5 metres away from and overlooks the only area where anyone staying at the Boathouse Chalet can sit and enjoy loch views and observe the wildlife. As the decking screens are only glass and metal they provide no privacy at all. The development is immediately and clearly visible to anyone entering the Chalet grounds and when walking down to the seating area. This harms the privacy and amenity afforded to those users of the Boathouse Chalet and to the owners of the premises, their friends and their B&B customers. The development should be repositioned elsewhere within the garden ground of Achnamara and if this cannot be achieved, our privacy and amenity could be protected, in part, by the erection of a 2 metre high screen along the west elevation of the construction. We would have had no objection had the construction been sited at the opposite side of the applicant's property.

Comment: The distance between the hot tub / decked area and the Boathouse Chalet building itself is approximately 27 metres. The distance from an outdoor seating area used by occupants of the chalet and the new construction is approximately 14 metres. Some natural screening is currently provided between the new construction and the neighbouring Chalet. This vegetation is generally of small and more maintained species and does not completely screen the chalet or its seating area from the new construction. There is limited to no screening between the outdoor

seating within the neighbouring property and the construction as this space is occupied by a drain outflow (potentially an old piped watercourse), rocks and part of the Loch Etive foreshore. There is no opportunity for the applicant to provide or maintain vegetation screening within this foreshore area due to the nature of the site. However, whilst in this instance it is considered that the construction the subject of this planning application might result in some loss of privacy/amenity to the users of the adjoining premises it should be noted that the construction is sited within a private residential rear garden where such incidental residential development and use of garden ground would normally be expected. It is further anticipated that the construction the subject of this planning application would likely only be used periodically, it being an uncovered area within part of the rear garden ground of the property and its use therefore constrained by the weather. Given the existing lawful use of the immediately adjacent land as private residential garden ground with no limits upon the frequency of its use for incidental residential purposes it is not considered that the development the subject of this application would result in any materially harmful loss of privacy/amenity to the occupiers of the adjoining property which could reasonably or appropriately be protected by planning legislation through the refusal of this planning application. This considered opinion is strengthened by the fact that planning legislation could not control the private incidental residential use of any part of the garden ground, including those areas immediately adjacent to the common property boundary. Similarly, it should be noted that the only part of the development actually requiring planning permission in this case is the raised decking with its associated balustrade. The hot tub itself and its associated flue does not require planning permission. Nevertheless, it is considered that it would be appropriate in this case to seek to afford an enhanced level of privacy between the application site and its neighbour by requiring the provision of a 1.8 metre high close-boarded (or similar) screen fence along the western side of the raised deck. This can be achieved through the use of an appropriate planning condition.

- Concerns regarding noise disturbance to the users of the Boathouse Chalet with reports of nuisance being caused by loud music being played late into the evening. This 'evening entertaining' could be conducted elsewhere within the garden area. It is therefore requested that a time limit be set for the use of the hot tub and decking area.

Comment: The application is for a householder development within the existing settlement and within part of a private garden area. It is not considered that the proposed development will generate significantly greater amounts of noise or disturbance to the occupiers of the adjacent dwellinghouse and garden than could reasonably be expected from any situation where two private gardens share a common boundary. In addition, it is recognised that the applicant could develop a significant part of his land adjacent to this common boundary with similar decking/seating areas and with other incidental residential outbuildings and structures without requiring planning permission. Indeed, several such structures already exist within this part of the applicant's rear garden ground. The Council's environmental health officer has examined the proposed development in detail and has concluded that its use is not likely to result

in a material noise nuisance. Accordingly, restricting noise level or use via a condition of consent is not considered reasonable or proportionate to any noise impacts which might be generated. Any statutory noise nuisance, either from the development the subject of this planning application or from elsewhere within the application site is capable of being controlled through appropriate environmental health legislation.

- Concerns regarding 'disco lights' being used inside a building.

Comment: It is not fully understood what this comment refers to, however as the current application does not propose the erection of a 'building' it is assumed that this comment refers to one of the two existing residential outbuildings that directly adjoin the site of the proposed construction. Both of these existing outbuildings are lawful and form incidental development within the garden ground of a private residential dwellinghouse. Their use does not fall to be considered as part of the current planning application and any statutory light pollution nuisance is capable of being controlled through appropriate environmental health legislation.

- Concerns that whenever the hot tub is to be used, the heating of its water results in acrid-smelling smoke being pumped out of the hot tube flue, polluting the air even on a clear, sunny day which is very unpleasant and can blow across to our property meaning that we cannot leave our windows open.

Comment: The distance from the hot tub flue and the Boathouse Chalet building is approximately 27 metres. The distance from the outdoor seating area used by occupants of the Chalet and the hot tub flue is approximately 14 metres. The hot tub is heated by means of a wood fuelled burner. Environmental Health have commented that whilst firing the hot tub boiler there is a potential to give rise to a small amount of wood smoke, however this is unlikely to give rise to any material nuisance to neighbouring receptors. Environmental Health further advise that should the operation of the hot tub boiler result in any statutory odour nuisance, this is capable of being controlled through their legislation. Notwithstanding this, it is reiterated that the hot tub itself and its associated boiler and flue do not actually require planning permission.

- Concerns that the hot tub is drained directly into Loch Etive which is close to a fresh water stream which is a home to wildlife. We are concerned that hot tubs are regularly cleaned using chemicals to limit the risk of infections and there may be environmental repercussions from draining these directly into the loch. Are SEPA aware of this? On the Gov.UK website it states that an environmental permit is required before draining waste water into open water. We do not know if the applicant has the necessary consent for this.

Comment: Any drainage from the hot tub into open water could be a matter for control though appropriate SEPA legislation and this would be a matter for them to investigate and enforce if necessary. However, and notwithstanding this, it is again noted that the hot tub itself does not require planning permission (for reasons discussed in Section P below). The applicant has commented that he does not believe that SEPA

legislation applies to domestic installations and that he is not, in any case, draining chemicals into Loch Etive. In addition, the applicant asserts that the 'fresh water stream' referred to by objectors is, in fact, a ditch which takes water from Old Shore Road plus the run-off water from most of the properties on the south side of this road into the Loch. The applicant comments that this drain is frequently contaminated by grey water.

- The objector believes the applicant's guests use the hot tub and the applicant has a duty of care and regular logs have to be kept regarding the temperature and condition of the water etc. so these can be inspected by Environmental Health.

Comment: This is noted but is not a material planning consideration in the determination of this planning application.

(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 eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

-
- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No**

-
- (J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) List of all Development Plan Policy considerations taken into account in assessment of the application.**

'Argyll and Bute Local Development Plan' (Adopted March 2015)

LDP STRAT 1 – Sustainable Development
LDP DM 1 – Development within the Development Management Zones
LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
LDP 9 – Development Setting, Layout and Design

Supplementary Guidance

SG LDP ENV 14 - Landscape
SG 2 – Sustainable Siting and Design Principles
SG LDP BAD 1 – Bad Neighbour Development

(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.

- Argyll and Bute Sustainable Design Guidance, 2006
- Scottish Planning Policy (SPP)
- Third party representations
- The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended)

(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

This retrospective planning application seeks the retention of a hot tub and its associated equipment and a surrounding area of raised decking with associated balustrade located within the private rear garden ground of a residential dwellinghouse, Achnamara, Connel in Argyll.

The hot tub itself has a diameter of approximately 2 metres and a height of 1.1 metres and rests upon a long-established concrete slab which forms the existing ground level of this part of the garden and is located to the rear of an existing summerhouse outbuilding and adjacent to a larger boathouse building, both of which also occupy the rear garden ground of this residential property and both of which are lawful. The siting of the hot tub plus its associated boiler and flue upon the existing concrete slab benefits from 'deemed planning permission' by virtue of the provisions

of Class 3A of Part 1 of Schedule 1 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended). It therefore does not require planning permission.

Surrounding the hot tub is a timber construction consisting of an area of raised decking with its sides enclosed by timber boarding and its platform level raised to just below the top of the hot tub. This decking covers an area of approximately 26 square metres and is raised to a height of 0.95 metres above the pre-existing concrete plinth. The decked area overlooks the shoreline at Rudha Riabhach, Loch Etive and is located close to the side boundary of the application property. The applicant has also installed a 1.1 metre high stainless steel balustrade with glass panels to the north and east elevations of the raised deck. This will give the raised deck an overall height of 2.05 metres.

Class 3D of Part 1 of Schedule 1 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended) also grants 'deemed planning permission' for the construction of raised decks or other platforms within the rear garden ground of residential properties but, in this case, this is limited to decking raised no more than 0.5 metres above ground level and with a maximum height including any handrail or balustrade of 2.5 metres. Therefore the decking construction requires planning permission but wouldn't if lowered in height by 45 cm.

In terms of the adopted Argyll and Bute Local Development Plan the site is located within the minor settlement village of Connel wherein key planning policy LDP DM 1 gives encouragement to appropriate scales of development; in this case not exceeding 'small scale' and subject to compliance with other relevant policies. 'Small scale' development is defined according to development type and whilst development within the curtilage of residential properties is not explicitly defined within the LDP, for other types of development this often encapsulates building development with a footprint area not exceeding 200 square metres or residential development not exceeding 5 dwelling units. The development the subject of this planning application is comfortably within any reasonable definition of 'small scale'.

The proposed development has attracted several objections which are summarised and assessed above. Whilst the proposed development does have some limited potential to affect the privacy and amenity of the occupiers/users of the adjacent property, it is not considered that these impacts would be materially harmful to an extent which would warrant the refusal of this planning permission given the assessment of the concerns raised. In this regard, it is considered that the proposed development would comply with the relevant provisions of the Local Development Plan, namely supplementary guidance SG 2 and SG LDP BAD 1 and with all other material planning considerations.

Supplementary Guidance SG LDP BAD 1 – Bad Neighbour Development states that certain types of development will only be permitted subject to certain criteria, primarily that they should have no unacceptable adverse effects on the amenity of neighbouring residents. Whilst the proposed development would not ordinarily fall within any of the specifically identified categories of 'bad neighbour development' it also includes developments which will affect residential property by reason of fumes, noise, smoke, artificial lighting etc or developments which will alter the character of an area of established amenity. Having carefully assessed the proposed development, it is not considered that it will either affect residential property or alter the established character of the area to any unacceptable extent.

The raised decked area has been designed and constructed so as to be visually

sympathetic to the dwellinghouse and its surrounding area and is of a suitable form and scale with acceptable finishing materials which will ensure it will not dominate or detract from the dwellinghouse or its setting within the wider landscape. To address concerns related to issues of privacy a minimum of a 1.8 metre high screening / fence along the west boundary of the deck is recommended to be installed. This will provide additional privacy to the seating area of the neighbouring properties known as the Boathouse Chalet and The Moorings. Subject to conditions of consent, the proposal complies with the terms of Policies LDP 3 which seeks to protect and conserve the built, human and natural environment against inappropriate development; policy LDP 9 which requires developers to produce and execute an appropriately high standard of design and Supplementary Guidance SG LDP ENV 14 and SG 2 which seek to ensure that development does not have a significant adverse impact on the character of the landscape or on the privacy and amenity of the occupants of neighbouring property.

The proposed development complies with all of these key policy aims and is considered acceptable.

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

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

The proposed development is within the 'settlement zone' and accords with the relevant provisions of the Local Development Plan and with all other material planning considerations including those concerns raised by third parties.

(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: Judith Stephen **Date:** 29.09.2017

Reviewing Officer: Tim Williams **Date:** 29.09.2017

Angus Gilmour
Head of Planning & Regulatory Services

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 17/01269/PP

1. The proposed development shall be carried out in accordance with the details specified in the application form dated 09 May 2017 and the approved drawings numbered 1 of 6 to 6 of 6 and stamped approved by Argyll and Bute Council.

Reason: In order to ensure that the proposed development is carried out in accordance with the details submitted and the approved drawings.

Note to Applicant:

- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 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.
2. Notwithstanding Condition 1, details shall be submitted to and approved in writing by the Planning Authority of an additional means of screening the development by the construction of an opaque barrier of at least 1.8 metres in height to be constructed along the western side of the raised decking hereby approved. The approved screening shall thereafter be installed in the position agreed within three months of the date of this permission, i.e. by 1st January 2018 and shall thereafter be retained.

Reason: In order to protect the privacy and amenity of the neighbouring property.

APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application **17/01269/PP**

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **No**
- (B) Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing. **No**

(C) The reason why planning permission has been approved:

The proposed development is within the ‘settlement zone’ and accords with the relevant provisions of the Local Development Plan and with all other material planning considerations including those concerns raised by third parties.

CHECK SHEET FOR PREPARING AND ISSUING DECISION

Application Number	17/01269/PP
Decision Date	29.09.17
Issue Latest Date	
Decision	Grant with Conditions & Reasons

Date signed by ATL

Don't Issue Decision		Tick if relevant	Action (tick)	Date sent
-----------------------------	--	------------------	---------------	-----------

Notification to Scottish Ministers		
Notification to Historic Scotland		
Section 75 Agreement		
Revocation		

Issue Decision		✓	<i>Tick</i>	Standard Conditions/Notes to include				
Tick	Dev/Decision Type	Time Scale*	Initiation	Completion	Display Notice			
			Only use if PP/AMSC & Granted					
	Local – Sch.3 – Delegated							
✓	Local – Delegated	✓	✓	✓				

*standard time condition not required if application retrospective.

Include with Decision Notice	
Notification of Initiation Form	✓
Notification of Completion Form	✓
Customer Satisfaction Survey	✓

Notify of Decision	
Objectors/Contributors	
Ongoing Monitoring – priorities:	

Total residential units FP3 (uniform)			
Houses		Sheltered	
Flats		Affordable	

This page is intentionally left blank

Page 51
APPENDIX 2

PLANNING APPLICATION NUMBER 17/01269/PP - REVIEW – ACHNAMARA, CONNEL

We refer to the above review. We would comment that, after looking at all the relevant information and facts, an experienced Planning Officer concluded that screening should be erected on the western elevation of the new decking/hot tub area and this was agreed by the Planning Committee. Nothing has changed.

With reference to paragraph 4, we would point out that the area previously used was 1.9 metres wide and this was increased by approximately two thirds and elevated (the existing concrete plinth was only occasionally used and was not as visible due to its height).

With reference to paragraph 5, we are wondering why, if the decking hot tub area is so exposed, that it was decided to locate it in this area. We would point out that we have spent approximately £500 on plants and fencing to try to screen the Boathouse Chalet lower garden seating area from the new decking area and this is even more exposed and closer to the sea.

We have a very well established self catering property and people from all over the world come to stay, many with young children and elderly relatives. Neither they nor we believe that it is acceptable for semi naked people (including children) to be in view in such close proximity and overlooking our property.

Sincerely



Jeanne and Stuart Carss

21/12/17

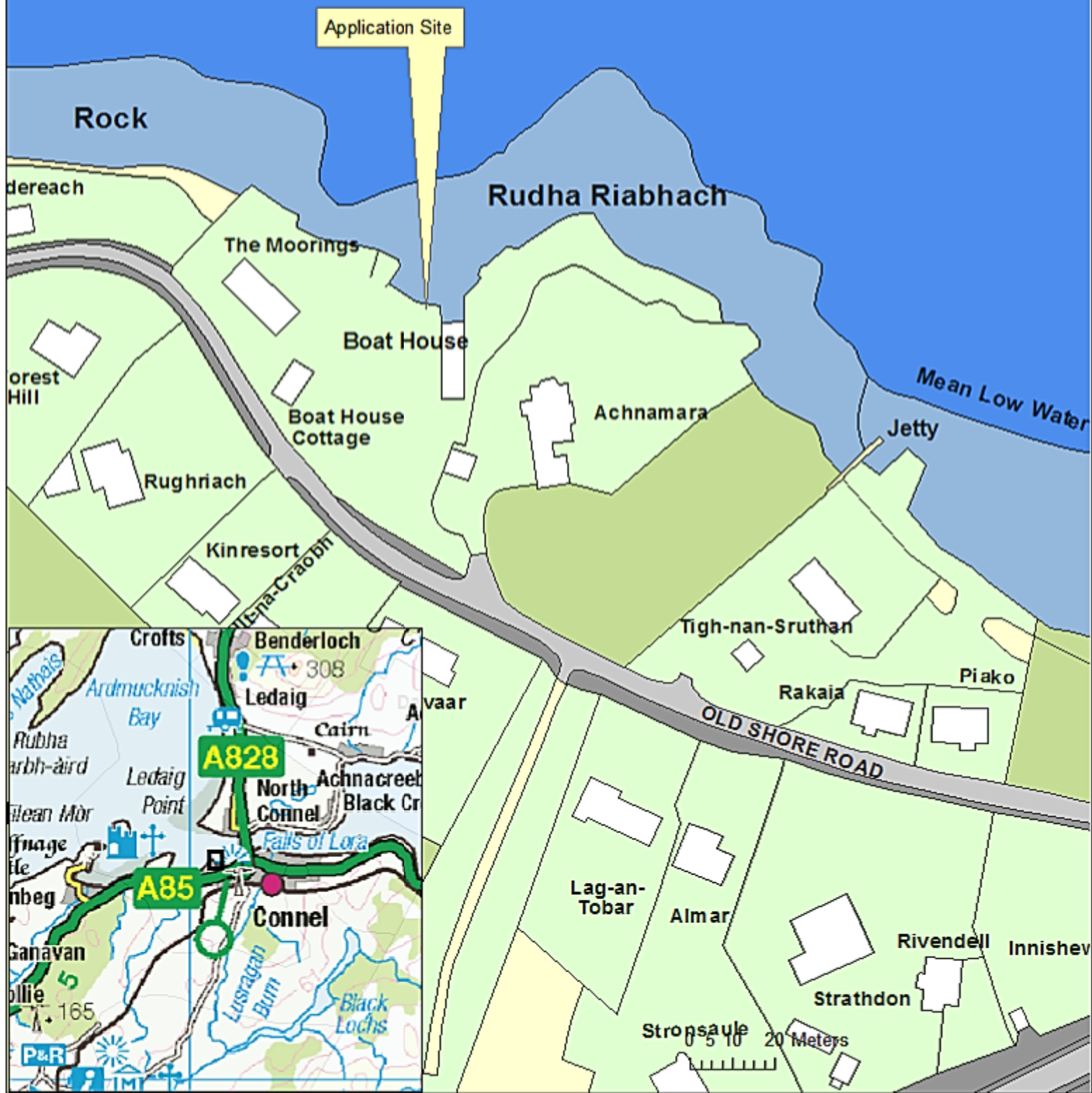
22 DEC 2017

This page is intentionally left blank

APPENDIX 3







Location Plan Relative to LRB - 17/0012/LRB



1:1,250

This page is intentionally left blank

17/0012/LRB

Appendix 2

Paragraph 1

I comment: The “experienced” Planning Officer who concluded that a 6 m sq screen was necessary is in fact the same Planning Officer who on inspecting my neighbours (Jeanne Carss) “Raised Decking”, deemed that it did not require planning consent. This mistake was corrected when I submitted photographic evidence which clearly showed the “in excess of 0.5m criteria”.
[see Appendix 6](#)

Paragraph 2

Planning condition 2 pertains to the “Raised Decking’ and not to the existing pavement outside the Blue Hut. This Blue Hut has been and is still in continuous use by us on a daily basis. It is worth pointing out that the Blue hut and surrounding area has always seen more use than the promontory (associated with the “Boathouse Chalet”) which it has always overlooked.

Paragraph. 3

The “Hot tub”, was placed in this position because of the idillic setting and the pre existing concrete plinth. This comment also brings me to “wonder” why the then Mrs Jeanne Adcroft (now Mrs Jeanne Carss) decided to build a Chalet which overlooks our garden and swimming pool (see photo enclosed with Mr and Mrs Carss letter of objection) and is overlooked by significant parts of our garden. Nothing has changed since then expect for the addition of a small area of raised decking some 7.5 m distant, at its nearest point, from our boundary

I am somewhat surprised that my neighbours are unable to comprehend the difference between vertical and horizontal elements and wind effect involved in the existing enclosed raised decking and the Planning Officers recommendation for a vertical barrier of some 6 square meters.

Notwithstanding the above and for clarity please note that the “hot tub”, empty weighs well in excess of 1 tonne and full in excess of 4 tonnes!

I note that Mrs Carrs has indeed planted some non indigenous plants on the promontory and has also installed some plastic support system for these plants. This in my view has detracted significantly from the aesthetic appearance of the foreshore. However I am at a loss to see what this has to do with my raised decking.

Paragraph 4

This paragraph is ridiculous and perverse. This area of the foreshore also contains a swimming pool which existed prior to the then Mrs Jeanne Adcroft building the house “Moorings” and the “Boathouse Chalet”. It is also an area where friends swim in the sea from time to time.

I await with interest the exact delineation of the area of our garden that Mr and Mrs Carss wish to exercise dress code over.

This page is intentionally left blank

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

17/0012/LRB

Removal of Condition 2 of planning permission ref 17/01269/PP (requirement for an additional means of screening the development by the construction of an opaque barrier of at least 1.8 metres in height to be constructed along the western side of the raised decking)

**Installation of hot tub with associated decking (retrospective)
Achnamara, Connel, Argyll.**

15th of December 2017

Annotated in BLUE by Donald MacPherson

Tuesday 23rd January 2018

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Mr Donald MacPherson ("the appellant").

Planning permission 17/01269/PP for the Installation of hot tub with associated decking (retrospective), Achnamara, Connel, Argyll ("the appeal site") was granted subject to conditions under delegated powers on 02 of October 2017.

Condition 2 of this grant of planning permission has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

The site and the development the subject of this review is as described within the attached report of handling (Appendix 1). The sole reason for review is the inclusion of a planning condition (Condition 2) attached to the approval of retrospective planning permission the subject of planning application reference 17/01269/PP, which states:

"Notwithstanding Condition 1, details shall be submitted to and approved in writing by the Planning Authority of an additional means of screening the development by the construction of an opaque barrier of at least 1.8 metres in height to be constructed along the western side of the raised decking hereby approved. The approved screening shall thereafter be installed in the position agreed within three months of the date of this permission, i.e. by 1st January 2018 and shall thereafter be retained".

Reason: In order to protect the privacy and amenity of the neighbouring property.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Act, regard is to be had to the development plan. The determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is not considered that any additional information is required in light of the appellant's submission. The issues raised were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small scale, has no complex or challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

The above statement is at odds with the inordinate length of time it took the Planning Authority to reach a decision and also with the contents of email from Tim Williams (ref appendix 5).

On the contrary as the imposition of this condition will set a precedent certainly for Argyll and Bute I believe that a on site hearing is absolutely essential.

COMMENT ON APPELLANT'S SUBMISSION AND STATEMENT OF CASE

Comments on the Appellant's Submission:

The appellant contends that there were six letters of objection in total of which two were duplicate from the neighbour and two of which were solicited from holiday rentals, which only pertained to the Hot Tub and not in fact to the raised decking.

Comment: This request for review relates solely to the Planning Authority's decision to grant planning permission subject to conditions, one of which (Condition 2) is deemed unacceptable by the appellant. Notwithstanding this, and for clarity, the Planning Authority received four representations of objection from three separate addresses with two of the correspondents submitting two representations apiece. The representations received and the issues raised are summarised within the attached report of handling.

A further letter of objection has been received in response to this current LRB appeal. This letter, dated 21st December 2017, is from an existing interested party and is attached as an appendix to this statement. It raises no new issues.

The letters of objection referred to above were indeed promulgated on the Argyll & Bute website despite containing numerous incorrect statements. It is also necessary to point out that a rebuttal letter sent in by my wife did not appear on the website for over 2 weeks

There is in fact one "new issue", paragraph 4 wherein my neighbour Mrs Jeanne and Mr Stuart Carss seek to exercise their dress code over areas of my garden.

Note. I must reiterate that the above objections relate to the "Hot Tub" and not the raised decking.

The appellant contends that the undue credence placed on the objections received was the cause of the delay in the department arriving at a decision for the planning application.

Comment: This request for review relates solely to the Planning Authority's decision to grant planning permission subject to conditions, one of which (Condition 2) is deemed unacceptable by the appellant. Notwithstanding this, and for clarity, the Planning Authority carefully considered the points raised in the representations received and all other material planning considerations. The determining factors in this application were complicated by the retrospective nature of the development

together with difficulties in arriving at an appropriate compromise position. Whilst it is accepted that these factors lead to unfortunate processing delays, it is not accepted that undue and inappropriate weight was afforded third party representations.

The request for review does indeed seek to remove the condition 2 in the planning consent issued on the 2nd October 2017. As this requirement is picked directly out of the letter of objection from Mrs and Mr Carss it has to be viewed in that context.

The retrospective nature of the application alluded to above can be directly compared with that of my neighbour and complainant Mrs Jeanne Carss. Mrs Carrs's application for retrospective planning permission for some raised decking abutting directly on her boundary to the west took less than 2 months to process.

ref email trail Appendix 6

The appellant contends that the Report of Handling states that the installation of the Hot Tub is permitted development.

Comment: This request for review relates solely to the Planning Authority's decision to grant planning permission subject to conditions, one of which (Condition 2) is deemed unacceptable by the appellant. Notwithstanding this, and for clarity, the Report of Handling states that the hot tub plus its associated boiler and flue upon the existing concrete slab benefits from 'deemed planning permission' by virtue of the provisions of Class 3A of Part 1 of Schedule 1 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended). It therefore does not require planning permission. However, the raised decking which surrounds the hot tub does require planning permission as is explained in appropriate detail within the attached report of handling.

The appellant contends that the area of garden and the summer house was in frequent use prior to the installation of the decking and hot tub and as the area has not been extended or encroached any closer to the boundary the appellant does not believe he should be required to partition part of his garden at the behest of his neighbours.

Comment: Although this specific area of garden ground may have been in frequent use prior to the partially retrospective installation of the decking and hot tub the subject of this review, it was considered that the development proposed would lead to a material increase in the frequency and type of use of this part of the garden. The development was appropriately assessed and a decision was eventually reached to grant retrospective planning permission subject to a number of planning conditions.

It now appears that how we use our garden and for what "type of use", is a matter for the Planning Authority (OBAN), on receipt of instructions from my neighbour!

The (in) appropriate assessment mentioned above is to prioritise the amenity of the adjacent non residential property over my amenity in my own garden.

The appellant contends that Condition 2 attached to the planning permission requiring the installation of a 1.8m high close boarded fence or opaque barrier along the western side of the decking is 'totally impractical if not downright dangerous'. The appellant states that the decking is on the foreshore in front of an existing summer house and on top of a pre-existing (for over 40 years) concrete plinth. The appellant states that this area is exposed to the full force of Westerly and Northerly gales which are not infrequent, with winds in excess of gale 8 and occasionally storm 10.

Comment: Planning permission was granted for the development subject to a planning condition requiring a short length of opaque screening to be erected along one side of the consented raised decking. The planning condition requires details of the proposed screen to be submitted to and approved in writing by the Planning Authority. Such required details may take account of prevailing weather conditions and the Planning Authority do not consider that such a screen capable of withstanding prevailing winds could not be erected.

The short length of screen mentioned above is actually 3.4m x 1.8m equivalent to a total area of 6.12m/sq. When engineering the structure to satisfy this condition the fact that the Planning Office consider that it "MAY" be necessary to consider the prevailing weather conditions does not seem to recognise the destructive nature of storm force winds on the west coast of Argyll.

The appellant contends that the option of a garden or tree or shrub screen is not available as the area is rocky foreshore normally inundated at high water particularly at equinoctial spring tides.

Comment: This is not an 'option' that is available to the appellant under the provisions of this review and, specifically, the requirements of Condition 2. The Planning Authority might have been prepared to negotiate an alternative means of appropriate screen planting instead of the opaque screen construction required by Condition 2, though the correct mechanism to have secured this would have been through the submission of a planning application to vary the wording of Condition 2. The appellant appears, however, to be stating here that he is not prepared to consider such a compromise approach.

Clearly this option mentioned above, and now withdrawn, never existed.

Statement of Case in Respect of Condition 2:

Circular 4/1998, Annex A, sets out Government policy in relation to the use of planning conditions. Conditions on planning permissions may be imposed only within the parameters of the six legal tests prescribed by Circular 4/1998. These 'six tests' are considered in turn:

Necessary: A planning condition must be 'necessary' to the extent that planning permission would be refused if such a condition was not imposed.

In this case, it is considered that the contested planning condition is necessary in that it seeks to ensure the provision of an appropriate visual screen between the development and the adjacent residential/business property given the close proximity of the development site to the garden ground of the adjacent property, the elevated nature of the development with respect to the adjacent property and the type of use of the development proposed. The planning condition is required in order to appropriately screen the development and to attenuate the privacy and amenity concerns raised by third parties and accepted (in part) by the Planning Authority.

It appears to me that the sole purpose of the condition is to appease a neighbour who just so happens to be a fellow Argyll & Bute Council employee. The adjacent property is in fact a business premise located in a residential area.

Relevant to planning: A planning condition can only be imposed where it relates to planning objectives. A planning condition must not be imposed where it seeks to secure the provision of some other Local Authority function or else relates to other specific planning or non-planning controls.

A bit late in discovering this clause. refer email from Tim Williams Appendix 5 also ref Memo Appendix 4 from Mark Parry Environmental Health Officer.

In this case, the contested planning condition seeks to address a material planning objective, namely that developments should not result in material harm, either due to their unacceptable visual impact and/or to the privacy and/or amenity of the occupiers or users of adjacent land. The contested planning condition, as worded within the planning permission the subject of this appeal, seeks to appropriately and proportionately control the visual impact of the proposed development together with its impact upon the privacy and amenity of the neighbouring properties, namely the Boathouse Chalet and The Moorings. Such control is directly relevant to planning and is not capable of being fully addressed by other legislation.

Relevant to the development to be permitted: A planning condition must fairly and reasonably relate to the development the subject of the planning permission.

In this case, the contested planning condition clearly relates specifically to the development the subject of the planning condition in that it requires the physical alteration of the structure the subject of the planning application; in this case the raised decking.

The Planning Authority wish to sully the Southern Shore of Connel Sound with a grotesque edifice almost half the size of the original low key development this can not be considered reasonable, relevant or fair.

Ability to enforce: A planning condition should not be imposed if it cannot be enforced.

In this case, the contested planning condition requires three things: Firstly, the submission, assessment and (ultimately) approval of details; Secondly, the

implementation of those approved details and; Thirdly, the retention of the approved and implemented works.

Each of the three components of the contested planning condition are readily capable of enforcement through existing planning legislation should they not be complied with (either in whole or in part). In this case, failure to comply with the planning condition will be subject to investigation by officers, through site inspection and negotiation, and, where deemed necessary and proportionate, through the serving of a 'breach of condition notice' as prescribed by relevant planning legislation.

Enforcement of this condition would be both practical, in that it would be a simple matter to detect a breach, and reasonable, in that the owner of the land can reasonably be expected to comply with it.

Precise: A planning condition must be written in a way that makes it clear to the applicant and others what must be done to comply with it and by when.

In this case, the contested condition is written in a way that makes it appropriately clear what is required and by when.

Reasonable: Is the condition reasonable?

In this case, it is considered that the contested condition is wholly reasonable. The requirement for the applicant/developer to submit details for assessment by the Planning Authority affords some scope for limited negotiation and, in this regard, is not considered unduly prescriptive or otherwise fundamentally onerous.

This condition is of course not reasonable.

Fortuitously we have, at Achnamara a plethora of highly qualified engineering competence (SME PLAT-I) who have kindly undertaken to look at the problem. First cut involves considerable amounts of seawater proof concrete or as an option rock drilling, this along with the necessary steel work and robust planking can only be considered to be extremely onerous. The requirement for a "permanent" installation has lead my engineers to consider the 100 year storm in their deliberations, clearly anything not engineered to a robust standard could at sometime constitute a danger to nearby life and property.

The contested planning condition is not considered unduly restrictive and neither would it nullify the benefit of the planning permission to which it relates. The planning condition would not prevent the use of the development or place upon it a financial burden of such severity as to make the development reasonably incapable of implementation. In addition, the condition does not require works on land or buildings to which the applicant has no interest or control at the time when planning permission was granted. Neither does the condition require the actions or consent of any third party or authorisation by anyone other than the Planning Authority.

CONCLUSION

Taking account of the above, it is respectfully requested that the application for review be dismissed.

On the contrary, taking into account the above the whole process needs a serious review. Bearing in mind that the initial "enforcement notification" incorrectly includes the HOT TUB even though I mentioned to Planning Officer Jamie Torrance that an opinion had been obtained from the Lochgilphead Office which advised that Planning Consent was not required for said HOT TUB. It is indeed unfortunate that the OBAN Office did not avail themselves of this knowledge so readily available at Lochgilphead.

LIST OF APPENDICES

The following appendices accompany this Statement:

- Appendix 1.** Report of Handling – Planning Application 17/01269/PP
- Appendix 2.** Representation to Local Review Body by Jeanne and Stuart Carss, dated 21.12.17
- Appendix 3.** Site photographs
- Appendix 4** *Memo from Mark Parry Environmental Health Officer completely irrelevant to this planing application. Issued prior to any site visit!*
- Appendix 5** *email from Tim Williams*
- Appendix 6** *email trail Donald MacPherson (appellant) and Planning Officer Jamie Torrance.*

From: [Williams, Tim](#)
To: ["Mr MacPherson](#)
Cc: [Torrance, Jamie](#); [Parry, Mark](#)
Subject: RE: Planning Application Ref 17/01269/PP [OFFICIAL]
Date: 25 August 2017 11:28:09
Attachments: [image001.jpg](#)

Classification: OFFICIAL

Dear Mr MacPherson,

Thank you for your email of 23rd August. Mr Reppke has already advised you of the formal arrangements to review the non-determination of your planning application. In the meantime, I thought it would be helpful to respond to the specific comments you raise.

Firstly, whilst I apologise for the continued delay in determining your retrospective planning application, the reason for this, as I explained to you on the telephone, is because we were trying to explore whether it might be possible to achieve a positive outcome for you by negotiating with our colleagues in Environmental Health. Whilst the prescribed 8 week determination period has now lapsed, it remains entirely possible for us to determine your planning application within the early part of this coming week. I am happy to give you my commitment to undertake this and issue a refusal of planning permission should a decision be your main focus, as appears to be the case given your request for a review into the non-determination of the planning application. – I would be grateful for your early clarification of this.

Secondly, it is noted that this planning application was generated following an ongoing planning enforcement investigation. Usually, an applicant for a prospective development requiring planning permission would engage with the Planning Authority informally through our long-established (and currently free-of-charge) 'pre-application advice' service in order that we might offer helpful professional advice and support which would, in this case, have included an early identification of any likely development constraints (such as proximity to neighbouring property and the consequent potential for environmental nuisance issues) and therefore given us an opportunity to suggest amendments/modifications to the proposed development before the planning application is submitted and certainly before construction commenced. We were not afforded this opportunity in this case and this, at the very least, makes the effective handling of the retrospective planning application more difficult and, consequently, more time consuming.

I accept, however, that you would have benefitted from earlier communication of the current environmental health concerns and from a more realistic explanation of the very real possibility that your application might not be supported. I apologise for this. I also offer my apologies for our failure to request from you your agreement to an extension of time to enable us to continue our deliberations towards attempting to achieve a more positive outcome.

I accept that the Planning Authority reserves the right to assume a 'no objection' response should a consultee not provide comments within a prescribed timescale. The purpose of the letter you reference is to remind consultees (and other interested parties) of our usual deadlines. In practise, however, the Planning Authority cannot and will not ignore comments if they are received before a planning application is actually determined – even if they are received 'late'. To do so would be both professionally and procedurally incorrect and could lead to any

such decision being subject to legal challenge.

You enquire regarding any 'criteria normally applied to Wood Burning Hot Tubs or in fact any Wood burning stove in Scotland or indeed Argyll and Bute'. I am not aware of any specific criteria; certainly not within associated planning legislation or guidelines. I can, however, inform you that wood smoke does have the potential to cause nuisance to private residential amenity if not properly controlled and that potential loss of residential amenity is a material planning consideration in the determination of a planning application.

You have requested a site meeting with a planning officer and with Mr Parry. I can inform you that Mark Parry and Jamie Torrance have agreed to meet with you to discuss the ongoing difficulties with your planning application. I have asked Jamie to liaise with you towards arranging a site meeting as soon as possible. I must, however, remind you that any such meeting will lead to further delays in the determination of your planning application and I must request your agreement to this before any such meeting can be progressed. In addition, whilst we remain happy to continue our negotiations towards the potential of securing a more positive outcome, it is by no means certain that such an outcome can or will be achieved. Your development poses material planning concerns and the ability to appropriately reduce or remove those concerns has been severely hampered by the retrospective nature of the planning application and the lack of any pre-application discussion.

I hope this helps explain our position.

Yours sincerely,

Tim Williams

Area Team Leader (Oban,Lorn and the Isles)
Development Management
Planning and Regulatory Services
Argyll and Bute Council

t: 01631 567820

e: tim.williams@argyll-bute.gov.uk

w: www.argyll-bute.gov.uk

Argyll and Bute - *realising our potential together*



Argyll and Bute - Realising our potential together

From: Microsoft Customer Support [mailto:macphed@btinternet.com]

Sent: 23 August 2017 17:57

To: Reppke, Charles <Charles.Reppke@argyll-bute.gov.uk>

Cc: Torrance, Jamie <Jamie.Torrance@argyll-bute.gov.uk>; Parry, Mark <Mark.Parry@argyll-bute.gov.uk>; Williams, Tim <Tim.Williams@argyll-bute.gov.uk>

Subject: Planning Application Ref 17/01269/PP

Mr Charles Reppke,

As per the advice in the Planning and Validation Team letter dated 14th June 2017 I request a review into the non determination of my application Ref 17/01269/PP (Installation of hot tub and associated decking). I am aware that I am now 10 days past the expected determination date and that this request for a review is time limited.

As per the advice in the above mentioned letter I did in fact contact my local Office in Oban last week on the 17th August and was advised by Jamie Torrance the he had completed his work and that the application was with his Team Leader Tim Williams, Jamie suggested that I should make contact again this week if I had heard nothing, this we duly did, we made several calls to the Office but were unable to speak to anyone. My wife did however call at the Office yesterday afternoon and had a conversation with Tim Williams. It was at this meeting, which I joined by phone, that Mr Williams showed the Memo from Mr Mark Parry Environmental Health Officer (copy attached) I note that the Memo was dated 3rd August and that we were made aware of it yesterday 22nd August.

I do not recognise the description of the Hot Tub smoke as mentioned in the complaint letter from Mr and Mrs Carss, paragraph 4, however it would appear that Mr Mark Parry has taken this description at face value, notwithstanding the many other erroneous statements and facts contained in that letter. Therefore in order to ascertain the actual situation I formally request a site visit by Mr Mark Parry and someone from the Oban Planning Office. I would be grateful if this site meeting could be arranged for a mutually convenient time, note it takes about 4 hours to fill the Hot Tub and the fire cannot be ignited until the tub is full so 24 hours notice would be useful.

I have gleaned from the Argyll and Bute Planning website, Document No 21621962 ECONS Electronic Consultation that if no reply was received from Environmental Health before 25th July then the assumption would be that there was no objection to the proposal. I am interested as to the purpose of this letter and why it was deemed irrelevant in this case.

It might also be useful to have some idea of the criteria normally applied to Wood Burning Hot Tubs or in fact any Wood burning stove in Scotland or indeed Argyll and Bute. Wood being a carbon neutral fuel much encouraged by our Government.

Regards
Donald MacPherson

Tel

Argyll and Bute Council classify the sensitivity of emails according to the Government Security Classifications.

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not disclose, copy or deliver this message to anyone and any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

In such case, you should destroy this message and kindly notify the sender by reply email. Opinions, conclusions and other information in this message that do not relate to the official business of Argyll and Bute Council shall be understood as neither given nor endorsed by it.

All communications sent to or from Argyll and Bute Council may be subject to recording and/or monitoring in accordance with relevant legislation.

This email has been scanned for viruses, vandals and malicious content.

Argyll and Bute Council
Comhairle Earra Ghàidheal agus Bhòid



Memo

Development and Infrastructure Services
Director: Pippa Milne

Municipal Buildings, Albany Street,
Oban, Argyll, PA34 4AW

Planning and Regulatory Services

Date: 3rd August 2017

To: Planning Services
Municipal Buildings, Oban

Your ref: 17/01269/PP

From: Mark Parry
Oban, Lorn & The Isles

Our Ref: 17/01654/PLANS

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)
PROPOSAL: INSTALLATION OF HOT TUB WITH ASSOCIATED DECKING (PART
RETROSPECTIVE)
SITE ADDRESS: ACHNAMARA CONNEL OBAN ARGYLL AND BUTE PA37 1PT**

Fuel for heating hot tub

The hot tub is located approximately 10 meters away from the Achnamara property boundary with the adjacent property; The Moorings.

Due to the hot tub being wood fired, this would give off smoke when burning and heating the water.

It is anticipated that this would potentially give rise to complaints of statutory nuisance from neighbouring properties due to the smoke which is given off.

Conclusions

Due to the likely complaints of smoke nuisance from the installation, I would recommend that the application is rejected on basis of these concerns.

M R Parry

**MARK PARRY
ENVIRONMENTAL HEALTH OFFICER
OBAN, LORN AND THE ISLES**

This page is intentionally left blank

From: [Torrance, Jamie](#)
To: [Mr MacPherson](#)
Subject: RE: Complaints in regards to development at "The Moorings" Old Shore Road, Oban
Date: 12 June 2017 08:58:13
Attachments: [image001.jpg](#)
[image002.jpg](#)

Dear Mr MacPherson

I am writing to you to advise that I have now revisited the site and can confirm that planning permission is required for the deck. A large portion of the structure does actually comply but I did note upon revisiting the site a couple of sections which did not.

I understand an application is to be lodged within the next two weeks.

I believe such an application would be supported by the Council.

Please feel free to contact me if you have any questions.

Regards

Jamie

From: Mr MacPherson
Sent: 09 June 2017 22:33
To: Torrance, Jamie <Jamie.Torrance@argyll-bute.gov.uk>
Subject: Re: Complaints in regards to development at "The Moorings" Old Shore Road, Oban

Sent from my HTC Donald

----- Reply message -----

From: "Torrance, Jamie" <Jamie.Torrance@argyll-bute.gov.uk>
To: "Mr MacPherson"
Subject: Complaints in regards to development at "The Moorings" Old Shore Road, Oban
Date: Fri, Jun 2, 2017 09:14

God Morning Donald

Thank you for the additional photos. I will go and have another look at my earliest convenience next week.

Regards

Jamie

From: Mr MacPherson

Sent: 01 June 2017 18:10

To: Torrance, Jamie <Jamie.Torrance@argyll-bute.gov.uk>

Cc: Williams, Tim <Tim.Williams@argyll-bute.gov.uk>

Subject: Re: Complaints in regards to development at "The Moorings" Old Shore Road, Oban

Good Afternoon Jamie Torrance,

Thanks for your email response to telephone call. I note the letter from Building Control in respect of the window which was accepted in 2015.

Decking Area

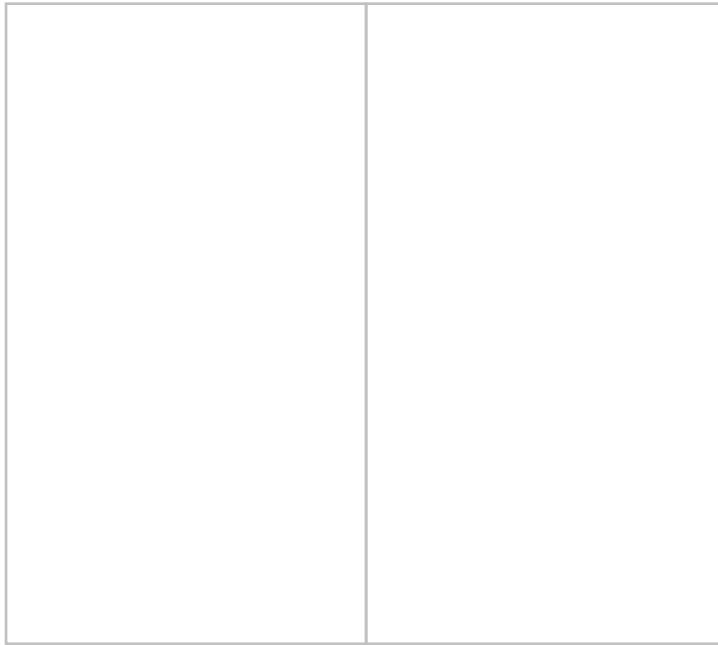
The Decking (Raised) referred to in my complaint of Tuesday 2nd May I comment on your conclusions as follows.

In the intervening period between my complaint and your visit to our neighbours site (The Moorings) there was in fact some degree of alteration. This included the under deck area being filled with roughly 2 cubic metres hard core and the ground level adjacent (to the west) being raised by the addition of some log roundels and hard core supported by shuttering.

The photographs included in your response dated 25th May do indeed show the stepped plan view of the decking, however the west profile (photo attached) clearly shows that an attempt to raise the natural ground level has been effected.

I also note that all visits to Old Shore Road have been made at the convenience of our neighbour Mrs J Carrs. The first visit in respect of my HOT TUB and Decking was made in conjunction with the complainant Mrs J Carrs, this no more than 4 days after the installation was completed, installation and construction having started 2 days earlier on the 16th April. Subsequent visits in respect of my complaint were also made at the convenience and in conjunction with Mrs J Carrs some 23 days after my initial notification to you by telephone, allowing ample time for modification.

The above seems to suggest that some degree of discretion has been exercised and that the natural ground in Old Shore Road is indeed "not level".



Regards
Donald MacPherson

On 31 May 2017, at 16:46, Torrance, Jamie <Jamie.Torrance@argyll-bute.gov.uk> wrote:

Good afternoon Mr MacPherson

I received your phone message yesterday and apologise for the delay getting back to you on the issues raised.

I respond as follows:

Decking Area

I attach relevant photos of the deck in question and a copy of the permitted development rights afforded to deck and raised platform areas within the curtilage of dwellings.

In this instance I do not believe any part of the structure exceeds 0.5 metres above natural ground level. The design of the deck area follows the natural ground level by being stepped to accommodate the ground level changes. I note that the ground level has been raised along the right hand edge of the deck. However, as you can see from the image this change is very small in respect of the location of the deck. I could not see any evidence of the ground level having been raised underneath the deck.

In respect of this development it would be my conclusion that planning permission is not required.

Window alteration to dwelling/accommodation unit

I attach a copy of the planning permission for this structure as well as a letter from

our building control team in respect of alterations to the structure. You will note that the original planning permission did not exclude future rights to install a window at this location. Such works are able to be carried out in accordance with permitted development rights as also set out in another attached document.

The installation of the window in this instance does not require the benefit of planning permission in my opinion.

I welcome any comments on this above matters raised. Please feel free to contact me to discuss accordingly.

Regards

Jamie

Jamie Torrance
Planning and Enforcement Officer (Oban,Lorn and the Isles)
Development Management
Planning and Regulatory Services
Argyll and Bute Council

t: 01631 567927

e: jamie.torrance@argyll-bute.gov.uk

w: www.argyll-bute.gov.uk

Argyll and Bute - realising our potential together

Argyll and Bute Council classify the sensitivity of emails according to the Government Security Classifications.

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not disclose, copy or deliver this message to anyone and any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

In such case, you should destroy this message and kindly notify the sender by reply email. Opinions, conclusions and other information in this message that do not relate to the official business of Argyll and Bute Council shall be understood as neither given nor endorsed by it.

All communications sent to or from Argyll and Bute Council may be subject to recording and/or monitoring in accordance with relevant legislation.

This email has been scanned for viruses, vandals and malicious

content. <SAM_7753.jpg><SAM_7755.jpg><PD rights for decks and raised platforms.pdf><the moorings permit.pdf><letter from building control.pdf><PD rights for external alterations.pdf>

Argyll and Bute Council classify the sensitivity of emails according to the Government Security Classifications.

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not disclose, copy or deliver this message to anyone and any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

In such case, you should destroy this message and kindly notify the sender by reply email. Opinions, conclusions and other information in this message that do not relate to the official business of Argyll and Bute Council shall be understood as neither given nor endorsed by it.

All communications sent to or from Argyll and Bute Council may be subject to recording and/or monitoring in accordance with relevant legislation.

This email has been scanned for viruses, vandals and malicious content.

Argyll and Bute Council classify the sensitivity of emails according to the Government Security Classifications.

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not disclose, copy or deliver this message to anyone and any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.

In such case, you should destroy this message and kindly notify the sender by reply email. Opinions, conclusions and other information in this message that do not relate to the official business of Argyll and Bute Council shall be understood as neither given nor endorsed by it.

All communications sent to or from Argyll and Bute Council may be subject to recording and/or monitoring in accordance with relevant legislation.

This email has been scanned for viruses, vandals and malicious content.

This page is intentionally left blank