

**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**

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**Reference No:** 15/03112/PPP

**Planning Hierarchy:** Local Application

**Applicant:** Mr and Mrs R and G McIntyre

**Proposal:** Renewal of planning permission in principle reference 12/01287/PPP Site for the erection of 5 dwellinghouses

**Site Address:** Land South East of Mamore Farm, Peaton Road, Rahane

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**SUPPLEMENTARY REPORT NO.1**

**(A) INTRODUCTION**

The attention of Members is drawn to the report dated 22.07.2016 which is currently before you for consideration.

Since the compilation of this original report, further representations have been submitted by the agent in respect of the suggested variation to the wording of condition 10. Officers agreed to allow the applicant and agent an opportunity to consider the suggested wording proposed by officers and this submission is in response to this.

**MATTERS RAISED IN ADDITIONAL SUBMISSIONS DATED 16.8.16**

Relevant extracts from the submissions and officer comments are set out below:

*"The Condition remains unaltered other than to have been caveated such that our Client will be relieved of this burden if footpaths are provided by a 3rd Party. Through telephone discussion, it has been confirmed that this is primarily to address the fact that Planning Consents relating to adjacent sites have been similarly conditioned to provide localised footpaths.*

*It would therefore appear that the previous inconsistencies and ambiguity in respect to the matter of pavement provision along Peaton Road remains unclear and fundamentally unresolved. It is therefore inappropriate and indeed unfair to effectively burden our Client with adopting responsibility for the above legacy by way of imposing legal Condition(s). In any event, current evidence would suggest that these Conditions are fundamentally unenforceable.*

*On the above basis, we request that, in the very least, this Condition be revised such that our Client be obliged only to provide a footway localised to the extent of his site boundary. This will be consistent with the Conditioning of adjacent sites and therefore is not only fair to all interested parties but will relieve the same of potential conflict and confusion in respect to future associated responsibilities.*

Officer Comment: Member's attention is drawn to the committee report where clarification for the suggested amendment to condition 10 and its justification is set out in detail.

*"Your email of 29th March 2016 confirmed that your intention would be to limit pavement provision to the frontage of the application site. Therefore, the fact that this has since been retracted and the matter continually deferred only serves to reinforce the points above in respect to the unresolved nature of the issue generally."*

Officer Comment: It is accepted that in the early stages of the application informal exchanges took place where alternative wording of condition 10 was explored between parties and limiting it to the frontage of the application site was discussed. However the applicant has been aware for many months following these exchanges that the application, upon further investigation, transpired to be far more complex than it first appeared, particularly in relation to ongoing enforcement investigations which were taking place in respect of pavement provision at plots 6 and 7 and the materiality of this to the wording of condition 10.

*"As matters stand, it would also appear that responsibility for this ambiguity and inconsistency of the Council are now to be the burden of our Client rather than suitably and fairly addressed internally by the Council. This is of course entirely inappropriate and it is interesting to note that at no stage have we been offered any reasonable or logical explanation in respect to these inconsistencies. Again, as matters stand, it would simply appear that our Client will be penalised and bear the burden of providing footpaths which are already Conditioned to be provided by others by way of Planning Consents. In any event, the suggested reframing of this Condition is therefore contradictory and would appear to undermine and invalidate all other Conditions relating to neighbouring obligations.*

*In terms of The National Planning Policy Framework 'Six Tests' Policy, 4 & 6 of the same insists upon any Planning Conditions being reasonable and enforceable. Given all of the above, we would strongly suggest that Condition 10 is neither reasonable nor enforceable. We would therefore suggest that this is further justification for this Condition to be revised and aligned in much more fair and appropriate terms prior to final determination."*

Officer Comment: The justification for the proposed wording of condition 10 is set out in the main report. It is Officers opinion that the suggested wording is in accordance with the required "six tests" for the reasons set out in the report.

*"Finally and on a general note, it is relevant to note that this application was lodged in October 2015. Since then it has been repeatedly deferred and postponed in order to afford the Local Authority the alleged necessary time in order to address related internal*

*matters with associated applications and outstanding enforcement issues. Throughout this same 10 month period, we have continually asked that we equally be afforded the reasonable and necessary time at the relevant stage to consider our position in respect to the reframing of Condition 10. Given current timeframes, it is very disappointing on various fronts that at the critical culmination of this 10 month period, we have been afforded only 4 working days to respond and have been asked to do so ASAP. Not only is this unreasonable but highlights a complete disregard, both for our Client's position and indeed our own as their advisors."*

Officer Comment: It should be noted that the application was unable to be determined following an objection from SEPA dated 8.12.16. This objection was not withdrawn until 17.3.16. Following this the need to consider the enforcement situation in respect of Plots 6 and 7 unfortunately further delayed consideration of the application given the need to have regard to these matters in the consideration of amending condition 10.

*"Notwithstanding all of the above and the questionable legitimacy of this Condition, we would also reiterate the fact that this very Condition is already representing a significant deterrent in respect to the current marketing and therefore ultimate development of the site(s). On that basis and given that this aspect has been discussed on numerous occasions, it is further disappointing that a Local Authority is choosing to proactively obstruct rather than enable positive economic activity and development of this site.*

*In summary, we would be grateful if you could acknowledge the above either by way of revising the wording of Condition 10 accordingly or postponing the determination date such that we are afforded reasonable and proportionate time to consider matters. In any event, we trust this letter will be made available to the relevant Members for their consideration."*

Officer Comment: Upon consideration of the limited time which was ultimately available to the applicant and agent to consider the amended wording to condition 10 and the obvious complexities involved in framing this condition having regard to the current situation, Officers are in agreement to a continuation of this application to allow further consideration and discussion on appropriate wording for condition 10 would be reasonable in the circumstances of the case.

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**(B) RECOMMENDATION:**

Having due regard to the information submitted since the original report, the Development Plan and all other material considerations it is recommended that the current application be continued to allow further consideration and discussion on appropriate wording for condition 10 as requested by the agent in submissions dated 16.8.2016

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**Author of Report:** David Moore

**Date:** 16 August 2016

**Reviewing Officer:** Howard Young

**Date:** 16 August 2016

**Angus Gilmour**  
**Head of Planning & Regulatory Services**

