

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)
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(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 through 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

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

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

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

'Argyll and Bute 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
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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	