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.***