

**Local Review Body
Land at Port A'Ghuail, Tarbert
Supplementary submission for the Applicants**

1. This supplementary submission addresses a number of observations recently made by the Planning Officer.

2. In terms of regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, certification was given on the application form that the Applicant had served notice on every person other than himself who, at the beginning of the period 21 days ending with the date of the application, was the owner of any land to which the application relates. Sam and Steve McColl were accordingly owner notified and their details given in the Land Ownership Certificate. The red line area identified on the application drawings is currently in their ownership and certification to that effect has properly been given.

3. Separately, at the date of the application, Sam and Steve McColl owned the wider area shown on the application drawings outlined in blue under deduction of Plot 3 (which the Applicant owns). Whilst that plot may more accurately have been carved out of the area outlined in blue, this minor technicality is not sufficiently material to invalidate the application. The fundamental point of owner notification is to identify the owner of the land proposed for the development and to give that party an opportunity to make representations which may then be taken into account in the determination of the application. That statutory requirement has been complied with. The owners of the land do not object to the proposal.

4. Questions of ownership do however bring into play two related questions which we wish to clarify for the LRB:-

(i) In the written submissions prepared in support of the review to the LRB, the applicant has proposed that the use of the development be tied exclusively to plot 3 and that this be secured through parties entering into s75 agreement. This could be achieved either through the Applicants and the owners of the boat shed site entering into the agreement with the Council restricting the use of the boat house in this way; alternatively, the Applicant could either take title to the boat shed site, or enter into a long lease which could then be registered, giving him the requisite power to enter into a s75 agreement directly with the planning authority. Either way, if the Council resolved to grant planning permission but only on the basis that a binding s75 agreement in terms satisfactory to the council is entered into, no consent for the boat shed would be issued and no development would take place unless and until an acceptable agreement was concluded linking the boat shed to Plot 3 as proposed.

(ii) Reference has been made to the curtilage of Plot 3 and whether this extends to include the land on which the boat shed would sit. We would respectfully suggest that this issue is not relevant to the determination to be made. The concept of curtilage is not at all well defined in Scots law (despite relatively common usage in planning documentation and elsewhere); there is no reference in the policy guidance to the development proposed having to

take place within the curtilage of any associated building; and the necessary linkage to Plot 3 (and hence control over the use made of the boat shed) can be secured by s75 agreement. In this way, the locational and/or operational need associated with Plot 3 is established and this distinguishes the development from any random proposal unrelated to any existing development. There is no requirement for that linkage to apply only where the linked development falls within the same curtilage (however that term is defined).

5. We have commented separately on the ACE undertaken by the council and the importance of the capacity of the area to accommodate this small development being evaluated under deletion of the plastic matting. We stress again that if this element is thought to raise planning issues, the Planning Authority can by condition specify that this element is not approved, and the Applicant is entirely content for a condition in these terms to be imposed.

Morton Fraser LLP
13 February 2019

Karen Taylor

From: Kenneth Carruthers
Sent: 12 February 2019 15:20
To: 'Shewan, Norman'
Cc: 'localreviewprocess@argyll-bute.gov.uk'; 'david.cameron@jbaconsulting.com'; 'ianmacdonaldjr@hotmail.com'; 'sylviahking@outlook.com'; 'Liz Roxburgh'
Subject: RE: ARGYLL AND BUTE LOCAL REVIEW BODY - LAND AT PORT A GHUAIL, BARFAD, TARBERT [OFFICIAL]

DOCID: 16088876
SENTON: 12/02/2019 15:19:34

Dear Mr Shewan

Thank you for this information. I shall take further instructions and revert to you.

I have a couple of preliminary observations to make in the meantime:-

1. In several places - including Field Sheet 4 and in 3 of the annotations to the photographs you have included - you refer to the "550m2 to be cleared, levelled and replaced with plastic ground reinforcement and grass seeded" or some such wording.

We have tried to make it explicitly clear in the previous written submissions that this element of the proposal can be deleted leaving only the little boat house remaining. It is perfectly competent to amend applications in this way in response to legitimate observations made through the planning process. By including the reference to tree felling etc, your ACE fails to assess what is now in fact proposed. It is difficult to avoid the conclusion this this reflects a lack of objectivity and a determination to present this proposal in the worst possible light.

At the very least, it is incumbent upon you to include an assessment of the modified scheme which the applicants have said they would be perfectly happy to accept so as to provide the Local Review Body the information it requires to properly assess what is proposed.

2. Can you please advise whether it is your intention to offer a conclusion as to whether or not the area assessed has the capacity to accommodate this small building? If so, can you possibly explain the basis of your conclusion and give a quantitative indication of site's capacity to accommodate the proposal?

I shall revert later in the week in response to your other points.

Yours sincerely

Kenneth Carruthers

Partner

For Morton Fraser LLP

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From: Shewan, Norman [mailto:Norman.Shewan@argyll-bute.gov.uk]

Sent: 12 February 2019 11:45

To: Kenneth Carruthers

Subject: FW: ARGYLL AND BUTE LOCAL REVIEW BODY - LAND AT PORT A GHUAIL, BARFAD, TARBERT [OFFICIAL]

Classification: OFFICIAL

From: Shewan, Norman

Sent: 12 February 2019 11:06

To: localreviewprocess <localreviewprocess@argyll-bute.gov.uk>; 'kenneth-carruthers@morton-fraser.com' <kenneth-carruthers@morton-fraser.com>; 'David Cameron' <David.Cameron@jbaconsulting.com>; 'Planning SW' <planning.sw@sepa.org.uk>; 'ianmacdonaldjr@hotmail.com' <ianmacdonaldjr@hotmail.com>; 'sylviahking@outlook.com' <sylviahking@outlook.com>

Subject: FW: ARGYLL AND BUTE LOCAL REVIEW BODY - LAND AT PORT A GHUAIL, BARFAD, TARBERT [OFFICIAL]

Classification: OFFICIAL

Dear All,

Please accept my apologies for not forwarding the attached information directly to you as advised on Form AB5 with regard to the above Review. The additional information requested was sent to Hazel MacInnes on the 7th February however I did not distribute it to those parties set out the Schedule.

I have just become aware of this oversight and immediately forwarded the requested additional information to each of you. I hope that this does not delay the review process.

Best Regards,

Norman

Norman Shewan

Planning Officer Mid Argyll

Development Management

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From: Shewan, Norman

Sent: 07 February 2019 16:45

To: MacInnes, Hazel <Hazel.MacInnes@argyll-bute.gov.uk>

Subject: RE: ARGYLL AND BUTE LOCAL REVIEW BODY - LAND AT PORT A GHUAIL, BARFAD, TARBERT [OFFICIAL]

Classification: OFFICIAL

Hazel,

Please find attached the following with regard to the above Review:-

- an Area Capacity Assessment (ACE);

- A plan drawing showing the residential curtilage to dwellings pursuant to condition 8 attached to planning permission 11/01887/PP
- Plot 3 (as shown on the above attached drawing) is the dwellinghouse associated with the proposed development site.

I can confirm that the planning application forms dated 1st December 2017 certify that the applicant, Mr. Lawson served notice on Mr Sam & Steve McColl of 4 Hillside Street, Edinburgh EH75HB as persons, other than the applicant, who was owner of any part of the land to which the application relates. On the basis of this certification I can confirm that Mr and Mrs McColl, prior to 21 days before the application submission, owned all of or part of the planning application site edged red.

However, the application also includes a larger area of land edged blue (enclosing the application site). Land edged blue on an application drawing should be ***within the ownership or control of the applicant*** (and not a third party). I would respectfully suggest that the Review Board request confirmation of the ownership details for the land edged blue from the applicants agent as I suspect that the applicant may not own the land edged blue. If this is the case, it appears that the application is not technically correct with regard to the relevant procedural guidance in this respect.

Best Regards,

Norman

Norman Shewan

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From: MacInnes, Hazel

Sent: 24 January 2019 09:40

To: localreviewprocess <localreviewprocess@argyll-bute.gov.uk>

Subject: ARGYLL AND BUTE LOCAL REVIEW BODY - LAND AT PORT A GHUAIL, BARFAD, TARBERT [OFFICIAL]

Classification: OFFICIAL

Following the first meeting of the Local Review Body held yesterday (23 January 2019) I enclose correspondence seeking further information from the planning authority and the applicant in respect of this case as detailed on the AB7 form. This information must be submitted by 7 February 2019 and copied to all interested parties as listed on the AB5 form. Interested parties then have 14 days to comment on this further information.