

# NOTICE OF REVIEW STATEMENT

Saturday, 7 March 2020 - Revision 0  
J165 Ardteatle

## Introduction

The purpose of this document is to describe why condition 4 attached to planning in principal application 19/01924/PPP should be changed. The relevant planning condition is quoted here.

*Pursuant to Condition 1 – no development shall commence until plans and particulars of the means of vehicular access and parking/turning arrangements to serve the development have been submitted to and approved by the Planning Authority. Such details shall incorporate:*

- i) Formation of the access at the junction with the public road in accordance with Operational Services Drawing No SD08/004a with visibility splays measuring 2.4 metres to point X by 75 metres to point Y from the centre line of the junction;*
- ii) A written scheme of improvement works to the existing public road including surfacing with bitumen macadam to a depth of 100mm for a minimum length of 350m and the provision of two passing places*
- iii) A system of surface water drainage is required to prevent water from passing onto the public road. Any existing roadside ditch will be required to be culverted to the satisfaction of the Roads Engineer.*
- iv) The provision of parking and turning in accordance with the requirements of Policy LDP 11 of the Argyll and Bute Local Development Plan.*

*Prior to work starting on site, the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the junction at point X to a point 0.6 metres above the public road carriageway at point Y. The final wearing surface on the access shall be completed prior to the development first being brought into use and the visibility splays shall be maintained clear of all obstructions thereafter.*

*The approved parking and turning layout shall be implemented in full prior to the development first being occupied and shall thereafter be maintained clear of obstruction for the parking and manoeuvring of vehicles.*

*Reason: In the interests of road safety to ensure that the proposed development is*

*served by a safe means of vehicular access and has an appropriate parking and turning area in accordance with the provisions of Policy LDP 11 and Supplementary Guidance SG LDP TRAN 4 and SG LDP TRAN 6 of the adopted Argyll and Bute Local Development Plan.*

The condition is not specific as to whether it is a written statement or the actual works that are required. The following correspondence with the planner clarifies this, my email sent 3/3/20:

*Dear Lesley,*

*Hope you are well.*

*I've been asked by my client to submit a notice of review for Condition 4 attached to planning application 19/01924/PPP, specifically because of the following statement:*

*"A written scheme of improvement works to the existing public road including surfacing with bitumen macadam to a depth of 100mm for a minimum length of 350m and the provision of two passing places"*

*But before I do this, could you clarify if this obliges my client to actually carry out the works, or merely to provide a written statement describing the works. If the latter, could you confirm if the form of the written statement is at our discretion?*

*The deadline for submitting the notice of review is the 8th of March, so it would be great if you could get back to me in the next day or so on this as it would be cause a lot of unnecessary admin if I had to submit the review and it later turns out not to be necessary,*

*Kind Regards,*

*Will*

Lesley Cuthbertson's reply of 4/3/20:

*Good morning Will,*

*I can advise that Condition 4 requires the submission of a written scheme of specific improvement works and also requires the works to be implemented prior to the development first being brought into use.*

*Feel free to give me a call on 01631 567954 should you require any further clarification.*

*Regards*

*Lesley Cuthbertson*

*Planning Officer*

*Argyll and Bute Council*

## **Grounds**

The grounds for review of the aforementioned condition are:

1. The council is legally required to maintain the highway regardless of whether this development proceeds.
  - 1.1. The Roads Scotland Act (1984) Section 1, paragraph 1 states: *'Subject to subsection (10) below, a local roads authority shall manage and maintain all such roads in their area as are for the time being entered in a list (in this Act referred to as their "list of public roads") prepared and kept by them under this section; and for the purposes of such management and maintenance (and without prejudice to this subsection's generality) they shall, subject to the provisions of this Act, have power to reconstruct, alter, widen, improve or renew any such road or to determine the means by which the public right of passage over it, or over any part of it, may be exercised.'*
  - 1.2. The proposed resurfacing works are to the UC63 Old monument Road, which is a road on the statutory list of roads for Argyll and Bute local authority as described in the act.
  - 1.3. The paragraph from the Roads Scotland Act clearly states that maintenance of the roads listed in this statutory document is a legal duty of the local authority.
  - 1.4. The photographs attached to the planning condition and statements made by third parties to the application clearly demonstrate that the road is in a poor state of repair and is an imminent risk of injury and damage to road users and their property. Given the legal requirements of the Roads Scotland Act, outlined above, it is clear that any injury or damage to third parties arising from their use of the public highway would be the council's liability regardless of whether the land that is the subject of the application is developed or not.
  - 1.5. Therefore, it is incumbent on the Local Authority, Argyll and Bute Council to maintain the public highway and resurfacing works and road safety improvements should be carried out regardless of whether my client proceeds with the development or not.
  - 1.6. Planning circular 4/1998 outlines a number of tests to see if a condition is reasonable. Among these are requirements that a condition be 'necessary and relevant to the development to be permitted'. Because of points 1.4 and 1.5 above this requirement is not relevant to this development as it is necessary for these works to be carried out regardless of whether the development proceeds.
  - 1.7. Therefore, it is not my client's duty to carry out the resurfacing works and this requirement should be removed from this condition. Further, it is the council's duty to assess the need for road maintenance and passing places so as to ensure road safety. If the road is currently unsafe, the council should remedy the problem.
2. A previous application for 2 properties on this land was granted without this requirement.
  - 2.1. There has been no relevant change in planning policy since the previous approval 15/02784/PPP was granted,
  - 2.2. Previous permission, 15/02784/PPP, was granted for two plots side by side. The roads consultation for this permission is attached and makes no mention of improvement works.
  - 2.3. Given the fact that the previous permission was granted with no mention of these improvements, and the policy has not changed, it is the council's own opinion that this development does not require the infrastructure to be upgraded.
  - 2.4. Further, it must also be noted that one house is less impactful on road safety than the previously approved two plots.
  - 2.5. Therefore there are no grounds for a different and far more onerous decision to be reached in this instance.
  - 2.6. Therefore the requirement to resurface the road and provide 2 additional passing places should be removed.

3. Planning obligations should not be used to resolve existing deficiencies in infrastructure.
  - 3.1. Planning circular 3/2012 para 20 states : *'Planning obligations must be related in scale and kind to the proposed development. Developers may, for example, reasonably be expected to pay for, or otherwise contribute towards the provision of, infrastructure which would not have been necessary but for the development. In assessing such contributions planning authorities may take into account the cumulative impact of a number of proposed developments, and use obligations to share costs proportionately. An effect of such infrastructure investment may be to confer some wider community benefit but contributions should always be proportionate to the scale of the proposed development. Attempts to extract excessive contributions towards the costs of infrastructure or to obtain extraneous benefits are unacceptable.'*
  - 3.2. Para 21 states: *'Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development. Situations may arise where an infrastructure problem exists prior to the submission of an application for planning permission. Where the need to improve, upgrade or replace that infrastructure does not arise directly from the proposed development then planning authorities should not seek to address this through a planning obligation. It is inappropriate to grant planning permission for a development which would demonstrably exacerbate a situation which was clearly already unsatisfactory.'*
  - 3.3. The Scottish government planning policy above states that the planning system should not be used to resolve existing deficiencies in infrastructure which are not specific or necessary for the development to go ahead. Arguments made in 1. above demonstrate that the council should repair the road and make it safe regardless of whether this development proceeds, not because of it. Arguments made in 2. above demonstrate that it is the council's own assessment that this infrastructure is not necessary.
  - 3.4. Therefore the requirements to resurface and add two additional passing places should be removed.
4. Planning conditions should be reasonable. The cost of implementing this condition places an unreasonable burden on the developer.
  - 4.1. At an approximate cost of £40 per m<sup>2</sup> of resurfacing work the cost of the repairs to the public highway would be in the region of £60,000. Each additional passing place would add a further £15,000.
  - 4.2. A typical 3 bed house with an area of 120 m<sup>2</sup> constructed to a standard specification will cost in the region of £200,000 to build.
  - 4.3. Therefore these requirements increase the cost to build the house by approximately 150%
  - 4.4. Therefore these requirements are clearly unreasonably excessive for a single dwelling house.
  - 4.5. Therefore the condition fails to meet the tests for a reasonable planning condition as set out in the relevant planning circulars.
  - 4.6. Therefore the requirements to resurface and add two additional passing places should be removed.