REQUEST FOR ADDITIONAL INFORMATION

IN RESPECT OF

ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY

21/0005/LRB

REFUSAL OF PLANNING PERMISSION FOR ERECTION OF LAND TO FORM YARD FOR ERECTION OF TWO HOLIDAY UNITS AND THE INSTALLATION OF A SEPTIC TANK – PLANNING APPLICATION REFERENCE 20/01542/PP

GARDEN GROUND OF SOROBA LODGE, OBAN.

22.12.2021

At the first calling of the above Review, Members have requested additional information and clarification from planning officers. The following is our response to the matters raised:

- Clarification on whether there could be a planning condition attached to an approval that required completion of a construction method statement and if this could include a weight restriction on vehicles using the bridge during the construction period.

  Comment: Officers maintain their opinion that any such planning condition would fail the necessary legal tests for the use of planning conditions. The reasons for this are:

  (i) As stated in our report of handling and reiterated in our statement of case, the applicant has failed to provide the information necessary in the interests of highway safety to enable a competent assessment of the existing access to be made; specifically the lack of the required structural survey of the existing bridge or the requested Safety Audit/Risk Assessment/Traffic Management Plan. Without that necessary information it would be difficult (if not impossible) to correctly and precisely frame the terms of any such planning condition;

  (ii) Notwithstanding the above, the developer for the current Review does not own or control any part of the private access road. Additionally, the Appellant in this case (through their Agent) has specifically and consistently stated their unwillingness to provide any of the necessary information as required by the Council as Roads Authority or to carry out any improvements to the existing private access, regardless of any such planning condition. Any such planning condition would, therefore, likely be unenforceable.

- A view in relation to the two pods being used instead of the two rooms in the house as B&B; and whether there could be a Condition or Section 75 Agreement put in place to manage that.

  Comment: Again, as stated in our report of handling and reiterated in our statement of case, it is the opinion of officers that any such action would fall outwith the scope of planning control and, therefore, would not be legally competent. The reason for this is because the use of up to two bedrooms within the existing dwellinghouse (a dwellinghouse of this size) to provide incidental bed and breakfast accommodation specifically and unequivocally does not amount to 'development'. It is not considered to be within the gift of the planning authority to seek to interfere with matters that do not constitute 'development'.

  The Review Body may wish to note that the same matter has been raised in connection with a current planning application for a different development elsewhere. The question has recently been escalated by the Council's solicitors (who have no immediate opinion contrary to that expressed by planning officers) to external legal advisors. That external legal opinion is currently awaited and the Review Body may wish to consider a further continuation of this Review until that external legal opinion has been expressed. However, Members are asked to consider also our response to the paragraph below:

- Clarification on the reasoning for the view that the development would result in intensification of use of the access; and if this was due to the fact that the bedrooms could still be used by friends and family members even if there was a condition in place that prevented their use as a B&B.

  Comment: The development, on an area of currently undeveloped ground, of two new and additional residential holiday letting units must, by any reasonable definition, amount to an intensification of development within that area. The question here is whether the impact of

that additional development (in this case the impact of the proposed development on the condition and safety of the private access regime and those users of it) can be 'off-set' through either the commensurate physical removal of an existing and lawful development elsewhere within the same local area, or the commensurate cessation of use of, or commensurate attenuation of use of, an existing and lawful development elsewhere within the same local area.

There has been no offer to physically remove any existing development, i.e. the existing dwellinghouse, Soroba Lodge or any commensurate part of it. That leaves us with the suggestion that the developer can, somehow, restrict the lawful use of the dwellinghouse in order to permanently reduce its maximum level of occupancy by an amount commensurate with the occupancy of the two new residential holiday letting units proposed.

The opinion of officers is, and remains, that this cannot be achieved.

If one accepts the argument that the use of the dwellinghouse cannot be attenuated in the manner suggested by the appellant (because to do so would be to interfere with something that does not amount to 'development' in the first place) then there can be no other conclusion than the development of an area of residential curtilage to provide two additional residential holiday letting units must be an intensification of the existing use. Any intensification of the existing use of the site must, therefore, result in a corresponding intensification of vehicles using the access that serves the property. The use of the two residential holiday units the subject of this Review will attract additional vehicular traffic and that additional vehicular traffic will add an increased burden upon a substandard private access regime, contrary to the interests of highway safety.

Even if one accepts that the legal right to use the two bedrooms within the main dwellinghouse as incidental bed and breakfast accommodation <u>could</u> be curtailed by means of planning condition, or voluntarily relinquished through Legal Agreement, this would not, in the opinion of planning officers, result in any necessary and commensurate attenuation of the increased vehicular use of the site. This is because the maximum intensity of use of the dwellinghouse is limited only by its physical size - Even if one could construct a suitably robust mechanism to ensure that the dwellinghouse does not offer limited B&B accommodation within it, this would not prevent those same bedrooms being occupied by other members of a single household or by visiting friends and family members. The size of any one single household (living together as a family, plus guests) occupying a dwellinghouse is limited only by the physical size of the building. There is no feasible mechanism in play here to limit the physical size of the building.

Similarly, and as unlikely as it may sound, officers can conceive of no competent mechanism that would prevent existing rooms within the dwellinghouse being redesignated into bedrooms, nor could it prevent the subdivision of existing rooms in order to increase the 'occupancy capacity' of the dwellinghouse.

It is the opinion of officers that any such condition imposed, or Agreement entered into, would irrevocably collapse under even the most rudimentary challenge, either by the current owners of the property or by some future owner.

It is further considered that the enforceability of any such condition or Agreement would be so impractical as to be, for all intents and purposes, impossible.