

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: 21/01202/PP

Planning Hierarchy: Local Development

Applicant: Mr Sean Murdoch

Proposal: Subdivision of 1 no. 4 bedroom flat to 2 no. 2 bedroom flats

Site Address: Flat 2/1, 14 Soroba Road, Oban

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Subdivision of 1 no. 4 bedroom flat to 2 no. 2 bedroom flats
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(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be granted as a minor departure to the provisions of the Local Development Plan subject to the conditions and reasons appended to this report and that the Scottish Government be notified of the Council's intention to grant planning permission for this development contrary to the advice of SEPA under the Town and Country Planning (Notification Of Applications) (Scotland) Direction 2009.

(C) HISTORY:

No relevant planning history.

(D) CONSULTATIONS:

Argyll and Bute Council Roads Authority
Report dated 13/09/21 advising no objection to the proposed development.

Scottish Environment Protection Agency (SEPA)
Letter dated 16/08/21 objecting in principle to the proposed development on the basis that it may place buildings and persons at risk of flooding contrary to Scottish Planning Policy (SPP).

SEPA have maintained this objection despite continued efforts by officers to elicit a more pragmatic and 'case specific' response, and have confirmed this as their final position on 7th January 2022.

JBA Consulting Ltd

Report dated 15/07/21 advising no objection to the proposed development but providing advisory comments for prospective purchasers to be made aware of the potential flood risk of the property and the need for an emergency evacuation plan in the case of an extreme flood event.

Health and Safety Executive (HSE)

Report dated 08/07/21 advising that the site does not currently lie within the consultation distance of a major hazard site or major accident hazard pipeline, therefore, at present HSE does not need to be consulted.

The above represents a summary of the comments made. Full details of the consultation responses are available on the Council's Public Access System by clicking on the following link <http://www.argyll-bute.gov.uk/content/planning/publicaccess>.

(E) PUBLICITY:

The proposal has been advertised in terms of Neighbour Notification procedures, closing date 02/08/21.

(F) REPRESENTATIONS:

No representation have been received regarding the proposed development.

(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 e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:	No

(H) PLANNING OBLIGATIONS

(i)	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, 2015

LDP STRAT 1 – Sustainable Development
LDP DM 1 – Development within the Development Management Zones
(Settlement Zone of Oban)
LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
LDP 8 – Supporting the Strength of our Communities
LDP 9 – Development Setting, Layout and Design
LDP 10 – Maximising our Resources and Reducing our Consumption
LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

SG 2 – Sustainable Siting and Design Principles
SG LDP ENV 14 – Landscape
SG LDP HOU 1 – General Housing Development including Affordable Housing
SG LDP SERV 7 – Flooding and Land Erosion, The Risk Framework
SG LDP TRAN 6 – Vehicle Parking Provision
SG LDP TRAN 7 – Airport Safeguarding

(i) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.

Argyll and Bute Sustainable Design Guidance, 2006
Scottish Planning Policy (SPP), 2014
SEPA Development Management Guidance: Flood Risk
SEPA Flood Risk and Land Use Vulnerability Guidance
Consultation Responses
Argyll and Bute proposed Local Development Plan 2 (November 2019)

The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time.

There are no provisions of pLDP2 that may be afforded significant weighting in the determination of this application.

(K)	Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:	No
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(L)	Has the application been the subject of statutory pre-application consultation (PAC):	No
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(M)	Has a sustainability check list been submitted:	No
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(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No

(P) Assessment and summary of determining issues and material considerations

Planning permission is sought for the subdivision of a first floor four bedroom flat into two separate two bedroom flats utilising the same access/egress arrangements and wholly contained within the existing building without the need for any extension or material external alteration.

In terms of the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015, the application site is located within the main town centre of Oban where Policy LDP DM 1 gives encouragement to sustainable forms of development subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities with SG LDP HOU 1 expanding on this policy giving support to new housing in the settlements on appropriate sites provided there are no unacceptable environmental, servicing or access issues.

All works to facilitate the subdivision of the flat into two separate units are internal with no works proposed to the exterior of the building.

The subdivision of the flat into two separate units is considered to be an acceptable proposal within this area of the town centre which is characterised by a varied mix of commercial, retail and residential uses.

However, the site is completely overlain by the indicative limits of flooding as per the SEPA Fluvial Flood Maps (2014) due to the proximity of the site to the Black Lynn Burn and accordingly SEPA has objected to the proposal advising that they categorise the proposed development as one seeking to add 'buildings used for dwelling houses', which comprises a 'Highly Vulnerable Land Use' within an area of 'medium to high fluvial flood risk'. Whilst SEPA acknowledge that the development would have the same footprint, they state that it would increase the number of properties located within an area identified as being at flood risk and with no safe access/egress. SEPA maintain that this is contrary to national planning policy and that the proposed development does not accord with their published flood risk and land use vulnerability guidance.

SEPA are correct in their conclusion, based on a rigid interpretation of Scottish Government policy and on an assessment of the proposed development against their development management guidance on flood risk.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people

would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk.

This assessment is underpinned in this case by JBA Consulting Ltd (JBA), the Council's Flood Advisors, who acknowledge that the site is within the indicative limits of flooding but recognise that the subdivision of the flat to form two units will not alter the vulnerability of the site in any way. JBA advise that as the property is a flat, considerably elevated above surrounding ground level, internal flooding to either of the proposed properties is very unlikely. JBA further advise that if the two flats are to be sold it is recommended that potential purchasers are made aware of the potential flood risk and the possible need for an emergency evacuation plan.

Thus whilst it must be accepted that the proposed development is contrary to both national and local flood risk planning policy, it is the recommendation of this report that the Scottish Government be notified of the Council's intention to grant planning permission for this development as a minor departure to the provisions of the Local Development Plan, and contrary to the advice of SEPA, under the Town And Country Planning (Notification Of Applications) (Scotland) Direction 2009.

(Q) Is the proposal consistent with the Development Plan: No

The proposed development is a minor departure to the adopted Local Development Plan, expressly Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 which require development to be located outwith areas of significant flood risk.

(R) Reasons why planning permission should be granted

The proposal to subdivide the flat into two separate units is considered to be an acceptable small scale development within this area of the town centre which is characterised by a varied mix of commercial, retail and residential uses. The proposed development would be in accordance with the relevant provisions of the Local Development Plan in all respects but one.

The site is overlain by the indicative limits of flooding as per the SEPA Fluvial Flood Maps (2014) due to the proximity of the site to the Black Lynn Burn and accordingly SEPA has objected to the proposal advising that, whilst the development would have the same footprint, it would increase the number of properties located within an area identified as being at flood risk and with no safe access/egress. SEPA maintain that this is contrary to national planning policy and that the proposed development does not accord with their published flood risk and land use vulnerability guidance. The proposed development must therefore be considered contrary to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were

to be approved and implemented. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk and this would warrant planning permission being granted as a minor departure to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

Notwithstanding the departure to policy LDP 10 and SG LDP SERV 7, the proposal accords with Policies LDP STRAT 1, LDP DM 1, LDP 3, LDP 8, LDP 9 and Supplementary Guidance SG2, SG LDP ENV 13, SG LDP ENV 14, SG LDP HOU 1, SG LDP SERV 7 and SG LDP TRAN 6 of the adopted 'Argyll and Bute Local Development Plan' 2015 and there are no other material considerations, including issues raised by third parties, which would warrant anything other than the application being determined in accordance with this reasoning.

(S) Reasoned justification for a departure to the provisions of the Development Plan

The considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. There will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any 'real world' change in vulnerability of the proposed development from flood risk and this would warrant planning permission being granted as a minor departure to Local Development Plan Policy LDP 10 and Supplementary Guidance SG LDP SERV 7.

(T) Need for notification to Scottish Ministers or Historic Scotland: Yes

Author of Report: Fiona Scott Date: 27/01/22

Reviewing Officer: Tim Williams Date: 27/01/22

**Fergus Murray
Head of Development and Economic Growth**

CONDITIONS AND REASONS RELATIVE TO APPLICATION REFERENCE 21/01202//PP

GENERAL

1. The development shall be implemented in accordance with the details specified on the application form dated **07/06/21**; supporting information and, the approved drawings listed in the table below unless the prior written approval of the Planning Authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
As Existing and Scheme Design	2125 01		08/06/21

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

Note to Applicant:

- This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
- In order to comply with Sections 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start. Failure to comply with this requirement constitutes a breach of planning control under Section 123(1) of the Act.
- 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.

Both the Notification of Initiation and Notification of Completion forms referred to above are available via the following link on the Council's website:

<https://www.argyll-bute.gov.uk/planning-and-environment/make-planning-application>

- Please note the advice and guidance contained in the consultation response from the Council's flood advisors, JBA Consulting Ltd which is available to view via the following link on the Council's Public Access System. Future occupiers should be made aware of the potential flood risk on the site. Should you wish to discuss any of the points raised in the response you are advised to contact JBA direct.

<https://www.argyll-bute.gov.uk/planning-and-environment/find-and-comment-planning-applications>

2. Prior to the development commencing an emergency evacuation plan shall be submitted to an approved in writing by the planning authority in consultation with the Council's flood advisor. Thereafter the development shall be implemented and operated in accordance with the approved plan.

Reason: In order to ensure suitable access is retained in the event of a flood.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/01202/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy and Key Planning Policies

In terms of the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015, the application site is located within the main town centre of Oban where Policy LDP DM 1 gives encouragement to sustainable forms of development subject to compliance with other relevant policies and supplementary guidance (SG).

Policy LDP 8 supports new sustainable development proposals that seek to strengthen communities with SG LDP HOU 1 expanding on this policy giving support to new housing in the settlements on appropriate sites provided there are no unacceptable environmental, servicing or access issues.

Policy LDP 9 and SG 2 seek developers to produce and execute a high standard of appropriate design and ensure that development is sited and positioned so as to pay regard to the context within which it is located consolidating the existing settlement and taking into account the relationship with neighbouring properties to ensure no adverse privacy or amenity issues.

Policy LDP 10 and SG LDP SERV 7 seeks to resist development within medium to high risk flooding areas (1:200 or greater annual probability of flooding) and developments on the functional floodplain unless in certain very specific circumstances (none of which apply to the currently proposed development).

Policy LDP 11 supports all development proposals that seek to maintain and improve internal and external connectivity by ensuring that suitable infrastructure is delivered to serve new developments with SG LDP TRAN 6 expanding on this policy seeking to ensure developments are served an appropriate parking provision.

No representations have been received regarding the proposed development.

B. Location, Nature and Design of Proposed Development

Planning permission is sought for the subdivision of a first floor four bedroom flat into two separate two bedroom flats utilising the same access/egress arrangements.

All works to facilitate the subdivision of the flat into two separate units are internal with no works proposed to the exterior of the building.

The subdivision of the flat into two separate units is considered to be an acceptable proposal within this area of the town centre which is characterised by a varied mix of commercial, retail and residential uses.

The proposal accords with the provisions of Policies LDP 8, LDP 9, SG 2 and SG LDP HOU 1 which collectively give support to new residential developments within the defined settlement where they relate to the existing settlement and take into account the relationship with neighbouring properties.

C. Road Network, Parking and Associated Transport Matters.

The property comprises the first floor of a tenement building situated within the main town centre of Oban with no off street access or parking provision. In their response to the

application the Roads Engineer has raised no objection to the proposed development due to the site being within the defined town centre where it would be served by existing on-street parking provision and public car parks.

The proposal is considered acceptable in terms of Policy LDP DM 11 and SG LDP TRAN 6 which seek to ensure an appropriate parking provision is available to serve proposed developments.

D. Infrastructure

The application does not propose any change to the existing water supply and foul drainage arrangements which are via connection to the public systems within the control of Scottish Water. The applicant will require to make contact with Scottish Water to secure separate connections for each unit should planning permission be granted.

The proposal is considered acceptable in terms of Policy LDP DM 11 which seeks to ensure the availability of suitable infrastructure to serve proposed developments and gives support to private drainage arrangements where connection to the public system is not feasible.

E. Flood Risk

The site has been identified as having the potential to flood and therefore consultation has been undertaken with SEPA and the Council's Flood Risk Advisors, JBA Consulting Ltd (JBA).

SEPA has categorised the proposed development as a 'highly vulnerable land use' and has objected to the development in principle on the basis that it may place buildings and persons at risk of flooding, contrary to Scottish Planning Policy (SPP).

The application site is completely overlain by the indicative limits of flooding as per the SEPA Fluvial Flood Maps (2014). These flood maps show that the application site and its wider surroundings lies within the medium likelihood (1 in 200 year) fluvial flood extent of the SEPA Flood Map and may, therefore, be at medium to high risk of flooding from the Black Lynn Burn. The site also lies within the functional floodplain.

SEPA advise that Paragraph 255 of the SPP states that "*the planning system should promote a precautionary approach to flood risk from all sources*", as well as flood avoidance and flood reduction, where appropriate. Paragraph 256 stipulates that, "*the planning system should prevent development which would have significant probability of being affected by flooding*".

SEPA further advise that, based on their flood maps, it appears that there is no safe (dry) access/egress from the property and that, in line with their duties under the Flood Risk Management (Scotland) Act 2009 to reduce overall flood risk and promote sustainable flood risk management, they are not supportive of additional highly vulnerable developments being in an area with no safe access/egress.

SEPA's 'Development Management Guidance on Flood Risk' (July 2018) states that,

"Proposed developments should not be located in areas at medium to high risk from fluvial or coastal flooding (or low to medium areas for civil infrastructure). Other most vulnerable uses will only be acceptable in low to medium risk areas if the hazard can be alleviated through appropriate mitigation.

Where this is not possible, some types of development may be acceptable if they meet the requirements of the risk framework (SPP, paragraph 263). The risk framework should

be applied within the context of the issues listed in paragraph 264 of SPP and our Land Use Vulnerability Guidance should be used to inform the vulnerability classification of the proposed land use and ensure that it is suitable for the location and degree of flood risk. In general, the following types of development may be acceptable in areas that are at risk of fluvial or coastal flooding:

a) Developments classed as water compatible or that are considered to be essential infrastructure which require a flood risk location for operational reasons. The operational need for the development is for the planning authority to determine.

b) Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.

c) Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.

d) Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.

e) Development in built up areas protected by an existing or planned flood protection scheme, where the standard of protection is appropriate for the vulnerability of the land use. “

The SEPA Land Use Vulnerability Guidance seeks to classify developments into a series of five specific land use types which range from ‘Most Vulnerable Uses’ (at the most vulnerable end of the scale) down to ‘Water Compatible Uses’ (at the least vulnerable end). The development the subject of this application has been categorised by SEPA as a ‘Highly Vulnerable Land Use’ (the second most vulnerable to flood risk) because it proposes development comprising ‘buildings used for dwelling houses’.

SEPA's guidance states that development falling within the ‘Highly Vulnerable Land Use’ category will only be acceptable within the medium to high flood risk within a built-up area if one of the following exceptions apply:

- *Redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.*
- *Redevelopment of a previously developed site where it involves the demolition of existing buildings and/or erection of additional buildings within a development site, and the proposed land use is equal or less vulnerable than the existing land use.*
- *Where the principle of development on the site has been established in an up-to-date, adopted development plan or the National Planning Framework and flood risk issues were given due consideration as part of the plan preparation process and our assessment of risk has not changed in the interim.*
- *The site is protected by a flood protection scheme of the appropriate standard that is already in existence and maintained, is under construction, or is planned for in a current flood risk management plan.*

Officers must accept that SEPA are correct in their conclusion, based on a rigid interpretation of Scottish Government policy and on an assessment of the proposed development against their development management framework on flood risk.

However, the considered and pragmatic opinion of officers in this specific case is that whilst the proposal will, technically, result in the creation of one additional unit of residential accommodation within what is currently a single residential unit, there will be no actual physical increase in the development at risk of flooding, with each of the proposed two flats having two bedrooms whereas the current flat has four bedrooms. The proposed subdivision will be achieved solely through internal rearrangement of the building and will not involve any increase in overall floor area or any net increase in the number of bedrooms currently and lawfully provided within the building. The maximum occupancy level of a building is limited solely by the size of the accommodation within that building. Given that the proposed development will not increase the size of the building or the floor space area within it, there will, therefore, be no likely increase in the actual occupancy levels of the building – the same amount of people would be at risk in a flood event now as would be if the current planning application were to be approved and implemented. Accordingly, it is not considered that there will be any ‘real world’ increase in vulnerability of the proposed development from flood risk.

This assessment is underpinned in this case by JBA Consulting Ltd (JBA), the Council's Flood Advisors, who acknowledge that the site is within the indicative limits of flooding but recognise that the subdivision of the flat to form two units will not alter the vulnerability of the site in any way. JBA advise that as the property is a flat, considerably elevated above surrounding ground level, internal flooding to either of the proposed properties is very unlikely. JBA further advise that if the two flats are to be sold it is recommended that potential purchasers are made aware of the potential flood risk and the possible need for an emergency evacuation plan.

SEPA have been asked to consider this position as falling within the first of their exceptions quoted above – that the development could reasonably be accepted as the *redevelopment of an existing building, including changes of use to an equal or less vulnerable use to the existing use.*

SEPA have considered this position by referring it to their planning and flood risk task group but have maintained their objection, stating that they, *“appreciate that Members may find it difficult to understand how the proposals lead to an increase in vulnerability as there will be no increase in the number of bedrooms or footprint of the buildings. We however view the proposals as an increase in the number of residential units and therefore the number of people at risk could also potentially increase. In line with SPP we are taking a precautionary approach to avoiding and reducing flood risk where appropriate.”*

This is disappointing but perhaps not altogether surprising. Nevertheless, officers consider that the pragmatic and proportionate approach in this specific case would be to notify the Scottish Government of the Council's intention to grant planning permission for this development as a minor departure to the provisions of the Local Development Plan, and contrary to the advice of SEPA.

In the event that Members are minded to approve the application in light of the recommendation by officers and having regard to National and Local Planning Policy with an outstanding objection from SEPA, this must be notified to Scottish Ministers. This requirement is set out in the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 (‘the Direction’).

Planning Circular 3/2009: Notification of Planning Applications sets out the process that will be followed in such notification cases under the Direction:

“Where a planning authority notifies Scottish Ministers of its intention to grant planning permission, Ministers consider whether to call in the application or clear it back to the authority to decide the matter as it thinks fit. Scottish Government officials should usually be able to tell the authority within the 28-day period set out in the direction whether Ministers propose to take any action. Scottish Ministers do not need to wait until the end of that 28-day period, and will issue their decision as soon as they are ready to do so. The Scottish Government is committed to efficient decision-making, but in exceptional circumstances it may take a little longer to reach a conclusion, in which case Ministers will issue a further direction, extending the period for their consideration of the matter.”