

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: 21/01912/PP

Planning Hierarchy: Local

Applicant: Mr Jon Sear – Port Bannatyne Development Trust

Proposal: Replacement of Roof Covering; Installation of Solar PV Panels and Formation of New Door with Flat Roof on Single Storey Part of Public House; and Change of Use of Land to Rear to Form Outdoor Seating Area with Associated Gabion Basket Retaining Wall and Fence

Site Address: 33 – 34 Marine Road, Port Bannatyne, Isle of Bute

DECISION ROUTE

(i) Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Replacement of roof covering
- Installation of solar PV panels
- Formation of new door with flat roof on single storey part of Public House
- Change of use of land to rear to form outdoor seating area
- Formation of gabion basket retaining wall
- Erection of fencing

(ii) Other specified operations

- Internal alterations
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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 subject to the conditions, reasons and informative notes set out in this report.

(C) HISTORY:

Planning Permission (ref: 06/01819/DET) granted on 21st February 2007 for the installation of replacement windows on the front elevation of the ground floor of the Anchor Tavern Public House.

Planning Permission (ref: 14/00961/PP) granted on 27th June 2014 for the installation of replacement windows on the front and rear elevations of the upper floor flat above the Anchor Tavern Public House.

(D) CONSULTATIONS:

Environmental Health Officer (memoranda dated 7th January and 1st February 2022)

It was requested that a suitable Noise Management Plan (NMP) be formulated for the proposed use of the beer garden and that a copy be submitted to the Environmental Health Service as soon as possible. It was recommended that the NMP also include noise management procedures for dealing with noise likely to arise from other activities related to the use of the public house such as deliveries, bottling up, use of amplified/recorded music, external compressors, etc.

The applicant subsequently submitted a NMP for the proposed use of the outdoor seating, which detailed the mitigation procedures that would be implemented should the proposals for use of the garden go ahead. Based on the document provided, and the intention of the applicant to ensure its implementation, the Environmental Health Service has offered no objection to the application.

Argyll and Bute Council's Biodiversity Officer (e-mail dated 11th January 2022)

It is recommended that the bat surveyor checks for bird species and nests (the latter as old and as currently out with the bird nesting season) under eaves/around the building along with hedgehogs in the garden contained within the property and provides suitable mitigation in order to ensure that no species are compromised.

The making of space for wildlife and enhancing the experience of outdoor dining could be in the form of sensitive landscaping, including shrub and small tree planting. As such, it is recommended that a condition is attached requiring that Landscape Planting Plan be submitted to and approved in writing by the Planning Authority.

(E) PUBLICITY:

Neighbour Notification (closing date: 9th December 2021) and advertised as development in a Conservation Area (closing date: 24th December 2021).

(F) REPRESENTATIONS:

Representations have been received from Joe McGoldrick, 18 Castle Street, Port Bannatyne Isle of Bute (letters dated 7th December 2021 and 14th January 2022)

Objections have been received from the following 17 sources:

Joe McGoldrick, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Isabella McGoldrick, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Ian McGoldrick, Flat 1/2, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Cameron McGoldrick, 24 Baybridge Road, Havant, Hampshire (received 24th December 2021)

Jane Hare, 18 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

James Hare, 5 Woodholm Avenue, Glasgow (received 24th December 2021)

Jamie Hare, Flat 4/2, 372 Pollokshaws Road, Glasgow (received 24th December 2021)

Ewan Hare, 42 Tantallon Tower, 5 Dirleton Drive, Glasgow (received 24th December 2021)

Susan Mahoney, 25 Marine Road, Port Bannatyne, Isle of Bute (received 24th December 2021)

Daniel MacKinnon, 3 Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

June Rutherford, 29A Castle Street, Port Bannatyne, Isle of Bute (received 24th December 2021)

Ronald McAlister Flat 1/1, 28 Marine Road Port Bannatyne Isle of Bute (received 24th December 2021)

James Cummings, 9 Kilburn Place, Glasgow (received 24th December 2021)

David Paterson, 34 Gordon Drive, Netherlee, Glasgow (received 24th December 2021)

Gillian Molloy, 76 Cleland Place, East Kilbride (received 24th December 2021)

Jim McNair, 24 Benbecula Road, Aberdeen (received 24th December 2021)

Richard Snape, Battery Cottage, Pier Road, Tarbert (received 24th December 2021)

A summary of the key issues raised by the objectors is provided below and individual comments are available in full for review on the Planning file available to view in Public Access.

- i. It is pointed out that the application site relates to two separate titles, with two distinct postal addresses, ownerships and established uses, namely: The Anchor Tavern, 33 Marine Road, (Public House) and Garden Land, 1 Quay Street.

It is contended that the address provided by the applicant (33 Marine Road) and the address on the Public Access System (33-34 Marine Road) fail to accurately describe the site and the reference to '*land to the rear*' in the application description could arguably be misunderstood to include the established

residential garden ground at the rear of 1 Quay Street, 18 Castle Street and 32 Marine Road.

It is contended that many long term and new residents of Port Bannatyne have expressed their disappointment at the details of the site address.

Comment: It is considered that the site address; the application description; and the red line around the application site accurately identify the location and nature of the proposed development. It is further understood that all of those parties with an ownership interest in the application site have been properly notified.

- ii. According to the '*Existing Floor Plan*' drawing, the site area is 192.75 square metres, which is significantly larger than the figure of 165 square metres stated in the application form.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he has accepted that the site area is approximately 190 square metres. He states that the discrepancy appears to have arisen as a result of the application form quoting from the building survey figures, which related only to the internal area.

This clarification on the site area does not affect the amount of fee to be paid and the discrepancy is not considered to be of sufficient significance that it renders the application procedurally invalid or open to challenge.

- iii. In the addendum dated 18 November 2021, the description states '*...change of use of land to rear to form outdoor seating area with associated gabion basket retaining wall and fence*'. It is contended that the applicant has critically failed to state the use class or classes in the terms used in the Town and Country Planning (Use Classes) (Scotland) Order 1997. However, it is pointed out that, in a social media post on 19th August 2021, the applicant referred to the use of "*a small bit of land for a beer garden.*" Based on this information, and the statements in the Design and Access statement, Argyll and Bute Council could reasonably assume that the intended use class of the residential garden land is '*beer garden*'. As such, the proposed use could be described as being: Public House (*sui generis*).

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he has advised in writing that the garden area that is the subject of this application is to be tidied up in conjunction with the community hub and that further consultation on the desirability of extending the alcohol licence to include the garden will be carried out prior to any application being made to vary the alcohol licence.

He has further stated that this would also allow the need/demand for outdoor drinking to be further assessed and, if it was decided not to apply to vary the alcohol licence, the garden area would be used as a community garden with the principal access via the existing access from Quay Street.

An assessment of the use of the outdoor area in relation to the privacy and amenity of adjoining residential properties is included in Appendix A of this report.

- iv. It is contended that the '*Elevation to South as Existing*' drawing is misleading, as it depicts an inaccurate and continuous ground level extending across the full length of the rear of 33 Marine Road and garden of 18 Castle Street/ 32 Marine Road.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and a revised '*Elevation to South as Existing*' drawing has been submitted.

- v. It is contended that the '*Section as Proposed*' drawing is unreliable as it depicts inaccurate ground levels at the south-most boundary of 1 Quay Street, sloping towards the rear of 33 Marine Road.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and a revised '*Section as Proposed*' drawing has been submitted.

- vi. It is contended that the applicant's proposal to excavate 1200 mm below the depth of the existing established dry stone boundary wall in order to install a foundation for the gabion basket wall will most likely result in a catastrophic collapse of this existing wall. It is considered reprehensible that the applicant has failed to produce any structural engineering specifications detailing the significant excavation works required to stabilise the existing established dry stone boundary wall. It is anticipated that the applicant's reasoning behind the inaccurate existing ground levels and omission of the existing established dry stone boundary wall is to conceal the considerable excavation works and associated costs required to stabilise the east most boundary of 1 Quay Street.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he has commented that, based on a visual inspection of the site, he considers that substantial excavation is not required.

He has explained that the dieback of vegetation for the winter has allowed more accurate measurements to be taken and he confirms that the actual levels are somewhere between those on the initial drawings and those suggested by the objector. Revised '*Elevation to South as Proposed*' and '*Section A-A as Proposed*' drawings have been submitted.

- vii. The applicant's omission of two of the five asbestos ventilation cowls, combined with the inaccurate depiction of the location of three asbestos ventilation cowls in the '*Elevation to South as Existing*' drawing is material to the integrity of the application.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and a revised '*Elevation to South as Existing*' drawing has been submitted.

- viii. The application form dated 8th September 2021 failed to indicate that there are '*trees on or adjacent to the application site*' and there was also a failure to indicate their '*canopy spread*' and if any are to be '*cut back or felled*'. Evidence has been submitted that clearly demonstrates there are three Holly trees approximately 30 feet in height with a crown of approximately 14 feet in diameter.

Established trees on established residential property within Conservation Areas are afforded special consideration, not dissimilar to protected tree status. Similarly, the presence (or potential presence) of a legally protected species is an important consideration in decisions on planning applications.

Comment: This issue has been drawn to the attention of Jon Sear of the Port Bannatyne Development Trust and he contends that he was advised that the Holly tree and a pear tree on adjoining land were not significant enough to refer

to on the application. He is not disputing the existence of the trees and the 'Existing' and 'Proposed' Ground Floor plans have been revised to show the Holly tree closest to the building.

The lack of detail on existing trees in the initially-submitted documentation is not considered to be of sufficient significance that it renders the application procedurally invalid or open to challenge.

- ix. Concern is expressed that the “*overly stylised handwriting*” used on the drawings results in text that is unclear and difficult to decipher.

Comment: This issue is not considered to have a material bearing upon the Planning aspects of the case.

- x. Concern is expressed that the applicant has provided inaccurate information on the flooding risk associated with the application having regard to flood maps produced by SEPA. It is contended that 33 Marine Road is at ‘*high risk*’ of flooding caused by coastal water and surface water. Given that the proposal includes the introduction of a paved area of approximately 30-40 square metres and an increase of approximately 10 square metres of the roof area, it is put forward that there will be a significant concentration of surface water and run-off, which would result in surface water flooding in the proposed terrace/beer garden. As such, the applicant should produce a Surface Water Drainage Strategy with detailed evidence including all assessments and investigations undertaken to justify the applicant’s chosen option to manage surface water and such a document should be available in association with the current application.

Comment: SEPA’s Flood Maps are designed to show areas that are likely to flood from rivers, the sea and surface water. Their website explains that one of the uses of the Flood Maps is “*to support decision making in land use planning to avoid development in flood risk areas as a first principle and identify where further assessment of risk may be required*”.

A minor section of the application site is shown on the SEPA Flood Maps as currently being within an area identified as at ‘*low risk*’ from coastal flooding and this is part of the Anchor Tavern Public House. This ‘*low*’ likelihood refers to areas with at least 0.1% chance of flooding each year. As there is no built development proposed within the ‘*low risk*’ area, this is not considered to be an issue.

The provision of suitable surface water drainage in relation to the creation of the outdoor seating area would have regard to the Building (Scotland) Regulations 2004 and the relevant Technical Handbooks.

- xi. Concern is expressed that the proposed development and change of use would have a detrimental impact upon the established residential amenity of neighbouring and surrounding properties and land, and would constitute a bad neighbour development by virtue of loss of privacy, noise and disturbance. It is stated that twenty three residential properties adjoining and neighbouring the proposed development have bedroom windows within 20 metres of the site.

It is alleged that, despite reassurances being given in August 2021, the applicant failed to conduct any substantive consultation with neighbours, in particular those with properties adjoining the proposed development. It is also stated that the applicant failed to produce an Operating Schedule and Noise Assessment Report. An account is given of noise breaking out from the Anchor Tavern public house day and night (from patrons, staff, amplified music, hand dryers, coolers,

disposal of bottles, deliveries and the opening, closing and slamming of doors), which could be heard from the bedrooms and living areas of an adjacent home.

It is contended that the significant number of valid objections that have been submitted serves to highlight the applicant's failure to undertake any meaningful and substantive consultation with the community, and in particular with neighbours, regarding the '*adverse effects on neighbours such as noise, smoke, loss of privacy etc.*' and other material concerns.

Comment: The issue of the impact of the proposal on the privacy and amenity of neighbouring residential properties will be assessed in Appendix A of this report. The matter of consultation outwith the Planning Application process does not have a material bearing upon the Planning aspects of the case.

- xii. It is contended that the proposed 1.8 m fencing would be totally inadequate in terms of '*protecting privacy*', as it would fall short of the cope stone of the existing established dry stone boundary wall at 18 Castle Street/ 32 Marine Road, by a depth of approximately 400 mm. Furthermore, the applicant has overlooked the fact the proposed ground level at the boundary of 18 Castle Street/ 32 Marine Road, after excavation will be approximately 2400 mm below the height of the cope stones of the existing established dry stone boundary wall.

Comment: This issue will be assessed in Appendix A of this report.

- xiii. Concern is expressed that the applicant has failed to demonstrate that the proposed development and material considerations are based on a carefully considered design process. The nearby gable dormer at the rear entrance of 32 Marine Road is dysfunctional in terms of access, construction and maintenance. Holistically, it is contended that the proposed development is not in keeping with the traditional construction methods and characteristics of the adjoining and adjacent structures and their designs. The proposed fencing and gabion basket retaining wall are inconsistent and alien to the existing design, character and materials of the established traditional dry stone wall construction with cope stones, which forms the west-most boundary of the proposed development.

Comment: These issues will be assessed in Appendix A of this report.

- xiv. It is contended that the positioning of the proposed entrance approximately 1 metre from the gardens of 18 Castle Street and 32 Marine Road is unacceptable, as the residents of these properties use the back garden on a daily basis. Concern is expressed that the owners would be subjected to a constant flow of patrons and staff using the proposed entrance, day and night. The proposed entrance would also be highly visible from road level and could be viewed from all the adjoining and neighbouring residential properties opposite.

Comment: These issues will be assessed in Appendix A of this report.

- xv. Given the overall surface area of the ten photovoltaic panels that are proposed on the rear roof slope, the majority of the proposed '*natural slate*' roof will be obscured. It is contended that the design and materials used in the proposed photovoltaic solar panels are inconsistent and alien to the existing design, character and materials used in the construction of the roofs adjoining and neighbouring the proposed development. The roof slope on the single storey south elevation is highly visible from road level and can be viewed from all the adjoining and neighbouring residential properties opposite. The south-facing roof slope is visible from longer distances to the west and north. The impact of the

proposal will conflict with the character of the building itself and surrounding buildings.

Comment: This issue will be assessed in Appendix A of this report.

- xvi. It is stressed that certain key aspects of the proposed development, such as the 'access ramp', are entirely dependent on the inclusion of 'the former shop' (35 & 36 Marine Road) in 'phase two' where it is stated that 'it will be possible to provide ramped access to the rear via the former shop, which benefits from step-free access from Marine Road.' Since 'phase two' is not included within the scope of the present application, these references should be disregarded when consideration is given to access arrangements 'to and into' the proposed development.

Concern is expressed that the applicant has failed to provide detail of the location of the 'step-free access' to the garden from Quay Street in the Design and Access Statement or submitted drawings. The residential garden land (*land at rear*) does not have an exclusive right of access from Quay Street and this may explain why no details are shown.

Four steps are shown in a narrow access corridor leading from the main bar and toilets up to the proposed terrace/beer garden so it would not have 'step-free access' from within the Public House. Furthermore, the proposed development does not provide any suitable access facilities to and into the proposed development for disabled people.

Comment: Jon Sear of the Port Bannatyne Development Trust has advised that there is a shared access path from Quay Street to the proposed garden and the surface of this path may be improved, subject to agreement with the other owners in the tenement. He has pointed that no development is proposed in this area.

Mr Sear has confirmed that whether step-free access can also be provided through the vacant shop depends on whether or not phase two goes ahead and that this cannot be guaranteed. He has expressed a commitment to making the best arrangements for access by disabled people within the existing constraints.

- xvii. Concern is expressed that, prior to the submission of the application, the applicant was made aware that a protected species is present on site and steps have not been taken by the applicant to establish the presence of the Pipistrelle bats. It is considered that a simple visual audit would have been sufficient to identify the presence and habitats of this protected species and other species that would be adversely impacted by the proposed development, including: tawny owls; collared doves; blackbirds; swifts; starlings; sparrows; crows; seagulls; and hedgehogs. In addition, there has been a failure to conduct or produce an Impact Survey on the surrounding established structures and flora and fauna that provide habitat and sustenance for the aforementioned species and an array of insects and invertebrates.

Comment: Jon Sear of the Port Bannatyne Development Trust has advised that the local bat recorder examined the site on 8th January 2022 and the conclusion was reached that the building is of low bat potential with no evidence of bats being found. A biodiversity statement has been prepared in response to the other substantive biodiversity issues and this was submitted on 1st February 2022.

- xviii. According to information held by the local licensing board, there are five licensed premises in Port Bannatyne and the village has a large capacity hall and Scout

Hall which cater for large indoor events. The owners of the Port Inn and Post Office made the difficult decision to combine both businesses under one roof, in order to make the business economically viable.

Since the closure of the Anchor Tavern in March 2021, a community survey conducted by the applicant demonstrated that 72% of the local residents that were surveyed expressed their needs for a café. 262 surveys were completed with 35% being completed by residents. It is contended that the applicant's own survey results show that there is no requirement or need for a public house with an outdoor seating area in the village.

Comment: Jon Sear of the Port Bannatyne Development Trust contends that, whilst it is correct that 72% of Port Bannatyne residents wanted a cafe, 71% of Port Bannatyne residents wanted a bar. He considers that a cafe would significantly duplicate the services offered (albeit with limited opening hours) by The Port Post Office and CaleDonia, whilst no-one is currently operating or planning to operate a pub in the village. He also contends that there is an increase in demand for outdoor seating following the Covid pandemic.

Neither the lack of need for a particular type of development nor the results of the community survey are considered to have a material bearing upon the Planning aspects of the case.

(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: | Yes |
| (iv) A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |
| (v) Supporting Information | Yes |

The applicant, Jon Sear of Port Bannatyne Development Trust, has produced a number of documents, including a Design and Access Statement; Noise Management Plan; Negative Bat Survey Statement; Biodiversity Statement; Landscape Planting Plan; and responses to the letters from objectors.

These documents can be viewed on the Council's website at <https://www.argyll-bute.gov.uk/planning-and-environment/find-and-comment-planning-applications>

(H) PLANNING OBLIGATIONS

Is a Section 75 obligation required: No

(I) **Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** No

(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
LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment
LDP 5 – Supporting the Sustainable Growth of Our Economy
LDP 8 – Supporting the Strength of Our Communities
LDP 9 – Development Setting, Layout and Design
LDP 11—Improving our Connectivity and Infrastructure

'Argyll and Bute Local Development Plan – Supplementary Guidance' (2016)

SG LDP ENV 1 – Development Impact on Habitats, Species and our Biodiversity
SG LDP ENV 13 – Development Impact on Areas of Panoramic Quality (APQs)
SG LDP ENV 17 – Development in Conservation Areas and Special Built Environment Areas
SG LDP ENV 21 – Protection and Enhancement of Buildings
SG LDP REC/COM 1 – Sport, Recreation and Community Facilities
SG LDP BAD 1 – Bad Neighbour Development
SG LDP Sustainable Siting and Design Principles
SG LDP SERV 7 – Flooding and Land Erosion – The Risk Framework for Development
SG LDP TRAN 3 – Special Needs Access Provision

(ii) **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.**

Scottish Planning Policy (2014)
Consultee Responses
Third Party Comments

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. The provisions of PLDP2 that may be afforded significant weighting in the determination of this application are listed below:

Policy 14 – Bad Neighbour Development

Policy 26 – Informal Public Outdoor Recreation and Leisure Related Development

Policy 49 – Sport, Recreation and Community Facilities

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No

(L) Has the application been the subject of statutory pre-application consultation (PAC): No

(M) Has a sustainability check list been submitted: No

(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No

There is a total of 17 no. objections to the proposed development. However, the land-use planning related issues raised are not considered to be unduly complex, and as such it is considered that a fully informed assessment and determination can be made with reference to this report.

It is also considered that the proposed development is consistent with the relevant provisions of the Local Development Plan. It is considered that there is no policy conflict with the recommendation.

The recommendation is also consistent with the consultation response from the Environmental Health Officer.

On the basis of the above, and having regard to the approved guidelines for hearings, it is considered that a hearing would not add value to this assessment.

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

The principle of the re-use of a property that has lain vacant in Port Bannatyne for approximately 11 months is to be welcomed and would increase the range of facilities in the village.

The Anchor Tavern is located on Marine Road, which is visually prominent in the Port Bannatyne townscape and the current application does not propose any alterations to the front elevation of the building.

The most significant changes are proposed to the rear of the building and, although this can be seen from Quay Street, the significance of this aspect is relatively minimal. It is considered that the various elements of the proposal that would alter the exterior of the building and adjoining land would have a '*neutral*' effect thereby preserving the character and appearance of this part of the Conservation Area.

The proposed provision of the outdoor seating area presents the potential for noise disturbance to neighbouring properties. There is a relatively large number of residents

living in close proximity to the public house including those on Quay Street, Marine Road and Castle Street and objections have been received from eight persons who have listed their address as Port Bannatyne.

A Noise Management Plan (NMP) has been submitted by the applicant and, having considered the details contained in this document, the Environmental Health Officer is satisfied and is recommending no objections to the proposal. A condition is specified that requires adherence to the terms of the NMP.

At present, the land on which the seating area is proposed does not appear to be in active use by people, given its overgrown appearance. There is a stone boundary wall separating this land from the private amenity space to the east and, based upon the information contained in the submitted drawings, there would be the potential for persons congregating in the seating area and at the door into the rear of the public house to be able to look over into the neighbouring ground. A condition is recommended that requires details of an appropriate boundary treatment to be approved by the Planning Authority and thereafter installed prior to the use of the outdoor seating area taking place.

Other issues such as external lighting, landscaping and biodiversity can be addressed through the imposition of suitably-worded conditions.

(Q) Is the proposal consistent with the Development Plan: Yes

(R) Reasons why planning permission or a Planning Permission in Principle should be granted

The development is considered to be acceptable in regard to all relevant material considerations including national and local planning policy and supplementary guidance. There are no other material considerations which would warrant anything other than the application being determined in accordance with the provisions of the development plan.

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

Not applicable.

(T) Need for notification to Scottish Ministers or Historic Scotland: No

Author of Report: Steven Gove

Date: 15th February 2022

Reviewing Officer: Howard Young

Date: 15th February 2022

Fergus Murray
Head of Development and Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO: 21/01912/PP

1. Unless otherwise required by any of the conditions below, the development shall be implemented in accordance with the details specified on the application form dated 8th September 2021; the addendum dated 18th November 2021; the 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
Location Plan	Drawing No. 2107 – 001	-	09/09/2021
Site Plan	Drawing No. 2107 – 002	A	09/09/2021
Plan as Existing	Drawing No. 2107 – 010	A	01/02/2022
Plan of Roof as Existing	Drawing No. 2107 – 011	B	01/02/2022
Section A-A as Existing	Drawing No. 2107 – 012	B	01/02/2022
Elevation to South as Existing	Drawing No. 2107 – 013	B	01/02/2022
Plan of Ground Floor as Proposed	Drawing No. 2107 – 014	F	01/02/2022
Plan of Roof as Proposed	Drawing No. 2107 – 015	C	01/02/2022
Section A-A as Proposed	Drawing No. 2107 – 016	G	01/02/2022
Sections B-B and X-X as Proposed	Drawing No. 2107 – 017	C	01/02/2022
Elevation to South as Proposed	Drawing No. 2107 – 018	E	01/02/2022
External Door	Drawing No. 2107 – 020	-	21/10/2021
Boundary Fence Typical Detail	Drawing No. 2107 – 024	-	01/02/2022

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

2. Unless otherwise agreed in writing, and with the exception of the mitigation measure identified in Point No. 5, the management of the area referred to as 'Terrace' in Drawing No. 2107 – 014 Rev F ('Plan of Ground Floor as Proposed') shall be carried out in accordance with the document titled 'Noise Management Plan – The Anchor Garden, Port Bannatyne' that accompanied the e-mail from Mr Jon Sear dated 31st January 2022. The easternmost boundary treatment stated in Point No. 5 of the document shall be installed in accordance with the details approved under Condition 3 of this permission.

Reason: In the interests of protecting the privacy and amenity of the residents of neighbouring properties.

3. Prior to the first use for the congregation of people of the area referred to as 'Terrace' in Drawing No. 2107 – 014 Rev F ('Plan of Ground Floor as Proposed'), full details of the

fencing (or similar) that is to be erected along the easternmost boundary of the site shall be submitted to and approved in writing by the Planning Authority. The approved boundary treatment shall be fully installed prior to the first use of this area for the congregation of people unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of protecting the privacy and amenity of the residents that use the private amenity space to the immediate east of the application site.

4. Prior to the commencement of any works in relation to the replacement of the roof hereby approved (or such other timescale as may be agreed in writing with the Planning Authority), details of the new roof covering that is to be installed shall be submitted to and approved in writing by the Planning Authority. The new roof shall be installed in accordance with the agreed details unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In the interests of visual amenity and for the avoidance of doubt.

5. Prior to the commencement of the development (or such other timescale as may be agreed in writing with the Planning Authority), full details of any external lighting to be used within the site shall be submitted to and approved in writing by the Planning Authority. Such details shall include the location, type, angle of direction and wattage of each light which shall be so positioned and angled to prevent any glare or light spillage outwith the site boundary.

No external lighting shall be installed except in accordance with the duly approved scheme.

Reason: In order to avoid light pollution in the interest of amenity.

6. Prior to the commencement of the development, a survey shall be undertaken within the application site in relation to the presence of bats, birds and other wildlife species and the results of this, together with details of a watching brief to be carried out during development works, shall be submitted to and approved in writing by the Planning Authority. The watching brief shall be undertaken in accordance with the agreed details unless the prior written consent of the Planning Authority is obtained for variation.

Reason: In order to protect natural heritage assets in the interest of nature conservation.

7. Prior to the commencement of the development (or such other timescale as may be agreed in writing with the Planning Authority), a scheme of surface treatment and landscaping shall be submitted to and approved in writing by the Planning Authority. The scheme shall incorporate the following details of:

- i) Existing and proposed ground levels in relation to an identified fixed datum
- ii) Any works to trees in or adjacent to the application site
- iii) Surface treatment for the area referred to as '*Terrace*' in Drawing No. 2107 – 014 Rev F ('*Plan of Ground Floor as Proposed*')
- iv) Proposed landscaping works including the location, species and size of every tree/shrub to be planted
- v) A programme for the timing, method of implementation, completion and subsequent on-going maintenance

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the Planning Authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise approved in writing by the Planning Authority.

Reason: To assist with the integration of the proposal with its surroundings in the interest of amenity.

NOTES TO APPLICANT

- **Length of permission:** 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 Section 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.
- 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 of Development' to the Planning Authority specifying the date upon which the development was completed.

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 21/01912/PP

A. SETTLEMENT STRATEGY

Port Bannatyne (in association with Ardbeg) is a “*village and minor settlement*” as identified in the Local Development Plan 2015. Under Policy LDP DM 1, developments up to small scale in nature will be encouraged in this type of settlement. Given that the site area is under 200 square metres, it is considered that the current application relates to a small-scale development.

In view of the foregoing, it is considered that the principle of the proposal is consistent with the provisions of Policies LDP STRAT 1 and LDP DM 1 of the Argyll and Bute Local Development Plan 2015.

B. LOCATION, NATURE AND DESIGN OF PROPOSED DEVELOPMENT

The Anchor Tavern is a Public House located on Marine Road, which is the main waterfront thoroughfare at the western end of Port Bannatyne. The property, which is understood to have been vacant since March 2021, occupies the ground floor of a two-storey terrace of buildings opposite the quay. Internally, to the front of the premises there is a bar area and a room that is accessed from the rear of the lounge bar, which has been used for playing pool, watching television and general assembly. Both the bar and the room have separate pedestrian accesses onto Marine Road.

In the rear part of the premises are located the male and female toilets together with a cellar and store area. There is a door on the west-facing elevation that allows separate access into this part of the building. On the exterior of the rear property, there is a sloping roof made of corrugated metal that has been placed over asbestos cement roof panels.

To the immediate rear of the building, there is an area of ground that is presently overgrown on which there is a variety of fishing equipment (e.g. baskets; pallets; plastic containers; etc.) and circular buoys. This land is within the application site although is not currently in the ownership of the applicant.

Further to the south and away from the Anchor Tavern is a grassed area of land that has Heras fencing along its western boundary with the footway on Quay Street. Various items have been placed on this ground, including a mobile van/container and sections of Heras fencing.

The upper floor of the terrace in which the Public House is situated contains residential flats whilst on the ground floor to the east is CaleDonia (a coffeehouse and bistro) and to the west is a retail unit, which is understood to have been vacant since the mid-2000s.

To the east and south-east of the land to the rear of the Public House is the private amenity space serving the flats in the tenement at 18 Castle Street and the flat at 32 Marine Road. There is a stone wall running along the boundary and two/three trees in this location.

The application proposes the following:

- The re-opening of the ground floor as a public bar and community hub
- The removal of the existing metal roof on the rear elevation and its replacement with a new roof
- The incorporation into the new roof of a door with a flat roof
- The installation of photovoltaic solar panels on the new rear roof slope

- The change of use of the land to the rear of the building to create an outdoor seating area
- The erection of new fencing on the easternmost boundary of the outdoor seating area
- The formation of a gabion basket retaining wall along part of the easternmost boundary and the entire length of the southernmost boundary of the outdoor seating area

The following is a summary of the information contained in the '*Design and Access Statement*' that accompanied the application and in an e-mail dated 14th February 2022 from Jon Sear of the Port Bannatyne Development Trust:

- Following the closure of all the pubs in Port Bannatyne, the Port Bannatyne Development Trust (PBDT) has identified that the Anchor Tavern offers the most suitable premises in the village for providing a pub and community hub that is viable to open all year round. It is currently liaising with the Licensing Officer of Argyll and Bute Council and its application for the transfer of the premises licence is with the Local Authority
- In the first instance, the intention is to operate within the terms of the existing licence but it is anticipated that an application for a major variation to the premises licence would be submitted in the second half of 2022 once the PBDT is clear what changes will best enable it to meet the needs of the community
- The current planning application includes a package of work that will be implemented in stages as funding and organisational capacity allows
- It is hoped that, following the successful reopening of the Anchor Tavern, the flexible space within the pub can be extended into the vacant shop at 35 and 36 Marine Road as phase two of the project, although this will be subject to organisational capacity, demand, viability and funding
- Following Covid, there is increased demand for outdoor space at hospitality venues and it is proposed to develop the overgrown land immediately to the rear of the building as a small and manageable sun-trap garden seating. The exact details of the management of this space will be determined after consultation with the community and with licencing, but it will close by 10pm and fencing to 1.8m will be provided to offer privacy to the adjacent drying green/garden serving the tenement at 18 Castle Street and 32 Marine Road
- The rear of the building faces almost due south so provision is being made for solar photovoltaic panels to be installed when funding permits. These will contribute to reducing the running costs and environmental impact of the building
- In Phase Two, it will be possible to provide ramped access to the rear via the former shop, which benefits from step-free access from Marine Road. In the meantime, step-free access to the garden will be from Quay Street

The principle of bringing a vacant unit back into use as a community-type facility is to be welcomed. There are issues associated with the proposal, however, and these are examined in the following sections.

On the basis of the foregoing, the proposal is considered to accord in principle with Policies LDP 5 and LDP 8 and Supplementary Guidance policy SG LDP REC/COM 1 of the Argyll and Bute Local Development Plan 2015.

C. IMPACT UPON BUILT ENVIRONMENT

The application site is located within the Bute Area of Panoramic Quality (APQ) and the Rothesay Conservation Area. Given the nature of the works and their location to the rear of the building in question, it is considered that they would have no effect upon the key characteristics of the APQ.

In terms of the built environment, Port Bannatyne originated as a fishing village with a linear settlement form that was characterised with a regular street pattern of two parallel streets running east-west along the shore (Marine Road and Castle Street) and short streets running between them. This street layout has remained largely unchanged over the years and, on the whole, its character as a small fishing village has been retained notwithstanding that there was some fairly extensive development as part of the overall tourist expansion of the Bute urban area in the late-19th and 20th centuries.

The Anchor Tavern is located on Marine Road, which is visually prominent in the Port Bannatyne townscape and the current application does not propose any alterations to the front elevation of the building.

The most significant changes are proposed to the rear of the building and it is acknowledged that it can be seen from Quay Street (which is one of the shorter streets connecting Marine Road and Castle Street). However, the significance of this aspect is considered to be minimal with neither the finish nor condition of the existing roof on the single-storey rear projection making any contribution to the character of the building itself or the wider Conservation Area.

The initial proposal identified the installation of a natural slate roof although the most recent drawings contain reference to a further two options – corrugated steel sheeting or simulated lead. Whilst natural slate would be the preference, it is considered that the principle of any of the three is acceptable with a condition ensuring that details are submitted for the Council's approval.

The proposal also involves the installation of ten photovoltaic solar panels on the rear roof slope and the general principle for this type of micro-renewable energy system is to avoid the principal elevation of a historic building. In this particular case, it is considered that the rear roof in question is very much a secondary slope with the proposed panels not affecting any significant architectural features.

A new door is also to be incorporated into the rear roof slope and the initial proposal identified the creation of a pitched roof over the door. The most recent drawings show a flat roof and, in the context of the position to the rear ground floor of the building, this is considered to be appropriate from a visual perspective.

The visual impact of the formation of the outdoor seating area on the land to the rear of the building also requires assessment. At present, this area is overgrown and also contains a variety of fishing equipment (e.g. baskets; pallets; plastic containers; etc.) and circular buoys.

The removal of the vegetation and assorted items would improve the appearance of this piece of land and such clearance works would be a stage in the creation of the seating area. However, this in itself would not be sufficient to justify the proposal as there are new elements to consider i.e. the gabion basket retaining wall and the new timber fencing. In respect of the former, this is shown as being under one metre in height and it could be filled with reclaimed local stone as suggested by Jon Sear of the Port Bannatyne Development Trust.

The fencing is to be erected principally as a means of assisting in reducing the level of overlooking between the proposed new doorway and seating area and the private amenity space of the residential properties to the east. As currently depicted, it would involve the installation of individual fence posts that would be inserted into the ground adjacent to the

easternmost boundary wall. For a distance of 6.3 metres, close-boarded timber fencing would be fixed to these posts such that it would project 400 mm above the top of the wall. As discussed in the next section, the height of part of this fencing will have to be increased in order to address the overlooking issue effectively. Subject to a condition requiring full details of the fencing to be agreed with the Council prior to its installation, it is considered that such a boundary treatment would not detract from visual amenity.

In conclusion, it is considered that the various elements of the proposal that would alter the exterior of the building and adjoining land would have a '*neutral*' effect thereby preserving the character and appearance of this part of the Conservation Area. **On this basis, and subject to suitably-worded conditions, the proposal is considered to accord with Policies LDP 3 and LDP 9 and Supplementary Guidance policies SG LDP ENV 13, SG LDP ENV 17, SG LDP ENV 21 and SG LDP Sustainable Siting and Design Principles of the Argyll and Bute Local Development Plan 2015.**

D. IMPACT UPON RESIDENTIAL PRIVACY AND AMENITY

The Environmental Health Officer (EHO) has commented that the proposed provision of the outdoor seating area presents the potential for noise disturbance to neighbouring properties from customers, which may include raised voices; talking; shouting; laughing; the use of mobile phones, etc. In addition, smoke from customers may also cause disturbance to those living nearby.

There is a relatively large number of residents living in close proximity to the public house including those on Quay Street, Marine Road and Castle Street and objections have been received from eight persons who have listed their address as Port Bannatyne. The concerns that have been expressed relate to the noise and smoke issues that would arise from the proposed use of the outdoor seating area as mentioned in the preceding paragraph.

Mr Jon Sear of the Port Bannatyne Development Trust contends that the majority of the twenty three homes that are referred to in the objections are long term empty dwellings and he points out that the owners of the two nearest residential properties (32 Marine Road and 1 Quay Street) have not objected to the proposals.

Noise Management Plan (NMP)

In his initial response to the application, the EHO recommended that a Noise Management Plan (NMP) be drawn up with reference to the Institute of Acoustics & Institute of Licensing Guidance entitled '*Good Practice Guide on the Control of Noise from Places of Entertainment*' (Dec 2016). The purpose of the NMP is to provide information on the noise issues likely to arise from the use of an outdoor seating; the proposed methods of managing these issues by the operator; and the formulation of an appropriate response should noise problems arise.

The applicant submitted a NMP to the EHO on 28th January 2022 and the document details the mitigation procedures that will be implemented should the proposals for the use of the outdoor seating area be carried out. These include the following:

- A finish time of 22:00
- The provision of close boarded fencing along the eastern boundary
- The rear entrance door being kept closed to prevent the '*break-out*' of entertainment noise from the public house
- Regular checks by staff to monitor customer behaviour and deal quickly with noisy or rowdy behaviour

- No amplified, acoustic or recorded music being played or other noisy equipment being used
- The siting of cigarette butt disposal facilities as far as possible from the façade of the building
- The provision of signage

In addition to the above, the document explains that the Port Bannatyne Development Trust (PBDT) has not yet taken a decision as to whether to apply to extend the Anchor premises licence to cover the outdoor seating area. Jon Sear of the PBDT (e-mail dated 14th February 2022) has advised that the intention is for the NMP to apply to the outdoor area being used in conjunction with the public house, regardless of whether this area becomes licenced. He has also confirmed that, should Planning Permission be granted, the NMP will be implemented and in operation immediately after the formation of the new door access from the public house.

Having considered the details contained in the NMP, the EHO is satisfied and, on this basis, is recommending no objections to the proposal. A condition should be attached that requires adherence to the terms of the NMP.

Use of Outdoor Seating Area Separate from Public House

The above assessment principally relates to the use of the outdoor seating area in association with the public house. However, Jon Sear of the PBDT (e-mail dated 14th February 2022) has advised that the acquisition of the outdoor area has been funded by the Scottish Land Fund and PBDT's objectives include providing facilities for the whole community. It is, therefore, hoped that the outdoor area can be available for use by members of the community at other times – for example, in the mornings when the public house is not open and he points out that its location means that it will be much more sheltered than other options in the village.

His view is that, when there is no staffing needed in association with the use of the outdoor area, the management provisions of the NMP should not be applicable and he considers that, at these times, the intensity of the use will not be such that these provisions would be necessary.

It is acknowledged that the use of the outdoor area in conjunction with the public house increases the possibility of noise disturbance. The NMP lists thirteen mitigation measures and not all of these involve active staffing, including:

- The provision of signage in the garden asking patrons to avoid shouting and to respect neighbours
- A suggestions/complaints process will be put in place and local residents will be encouraged to use it. Sensitivities to noise disturbance may depend on the timing and location of specific activities (such as children's bedtimes) and these will vary with time. Additional measures will be put in place to control noise at specific times when required
- As a community venue, the aim is to create a culture of awareness around potential disturbance to neighbours and community members using the premises regularly will be encouraged to be proactive in responding to situations which could lead to neighbours being disturbed
- No forms of entertainment (e.g. amplified, acoustic or recorded music), other performances or equipment (e.g. bouncy castle etc.) using noisy equipment such as generators, pumps etc will be permitted to be used in the outdoor seating area

Condition 2 in this report requires that the management of the outdoor area be carried out in accordance with the NMP and no distinction is made in the wording of this condition between usage in conjunction with the public house and usage separate from it.

Given the overall ethos in the NMP of seeking to reduce as far as is possible the impact of the use of the outdoor area on neighbours, it is not considered necessary to introduce a distinction in Condition 2 as to how the NMP is applied in different situations. Notwithstanding this, it is anticipated that common sense would be exercised in the monitoring and enforcement of the condition should issues be raised once the use of the outdoor area commences.

Potential Overlooking Issues

In addition to the issues of potential noise and disturbance, there is a need to assess the impact from an overlooking perspective of introducing an outdoor seating area for up to 20 persons adjacent to the private amenity space of neighbouring residential properties. At present, the land on which the seating area is proposed does not appear to be in active use by people, given its overgrown appearance. There is a stone boundary wall separating this land from the private amenity space to the east and, based upon the information contained in the submitted drawings, there would be the potential for persons congregating in the seating area and at the door into the rear of the public house to be able to look over into the neighbouring ground.

A fence is shown as being erected along the mutual boundary that would project 400 mm above the top of the wall but this height may need to be increased in the area closer to the rear of the public house and this can be addressed with a condition requiring further details to be approved by the Council.

Finally, it is considered both necessary and reasonable to attach a condition that requires details of any external lighting (either on the building or free-standing) to be submitted in advance of the outdoor seating area being formed to ensure that there is no excessive light being created that would be to the detriment of residential amenity.

On the basis of the foregoing, and subject to suitably-worded conditions, the proposal is considered to accord with Supplementary Guidance policy SG LDP BAD 1 of the Argyll and Bute Local Development Plan 2015.

E. BIODIVERSITY

Mr Jon Sear of the Port Bannatyne Development Trust has submitted a '*Negative Bat Statement*' from Mr Billy Shields in which the latter considers the building to be of '*low*' bat potential and that the development can proceed with a '*watching brief*'.

Mr Sear has also submitted a '*Biodiversity Statement*' that identifies two possible risks to biodiversity. He states that there is a small probability of hibernating hedgehogs on site and proposes that initial site clearance is to be undertaken using hand tools only and, in the event of a hedgehog being discovered, it is to be gently covered up again as quickly as possible, and a suitably experienced person contacted for further advice.

He mentions that birds may nest in different locations from year to year so this would need to be checked prior to commencement of development. However, for commercial reasons relating to the seasonality of the pub, he states that the development requires to be commenced during the autumn or winter months (September to February). He considers that this in itself will be sufficient mitigation to ensure there is no disturbance. He notes that the "*black bird*" nest referred to in an objection is outwith the application site and he feels that it is highly unlikely that swifts would nest in such a low building, surrounded by much higher buildings.

The above information has been passed to the Council's Biodiversity Officer and her comments are awaited. In the meantime, conditions have been formulated on the basis of the documents submitted by Mr Jon Sear.

On the basis of the foregoing, and subject to suitably-worded conditions, the proposal is considered to accord with Supplementary Guidance policy SG LDP ENV 1 of the Argyll and Bute Local Development Plan 2015.