

REQUEST FOR ADDITIONAL INFORMATION

IN RESPECT OF

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

21/0005/LRB

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

GARDEN GROUND OF SOROBA LODGE, OBAN.

28.02.2022

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

- A summary of the legal advice received from Brodies Solicitors in respect of a similar and current planning application.

Comment: Brodies Solicitors have made the following points pertinent to the current Review:

The Council has a statutory power under s.41(1) of the 1997 Act to attach conditions regulating the development or use of any land under the control of the applicant (whether or not it forms part of the application site), or requiring the carrying out of works on any such land, so far as appears expedient to for the purposes of or in connection with the proposed development.

However, they agree that the use of the existing dwellinghouse to provide incidental bed and breakfast accommodation is not 'development'.

Thus, whilst a legally competent planning condition under s.41(1) of the Act could, in principle, be drafted, any such condition would be 'incredibly difficult' [their words] to monitor/enforce.

Notwithstanding the statutory power conveyed under s.41(1) of the Act, Brodies Solicitors consider that such a condition may not meet all of the necessary tests for imposing conditions in Circular 4/1998. In particular, such a condition is likely to fail at least the enforceability test and possibly the reasonableness test.

In addition, Brodies Solicitors comment that the case officer's assessment of the situation is correct: There is nothing to prevent the intensification of use of the access road simply by all occupants of the dwellinghouse (assuming all existing bedrooms are occupied, whether by the applicants and their family or in part for use as a B&B) all having a vehicle each. That being the case, the justification for (and hence reasonableness of) the condition might be questioned.

For all of these reasons, Brodies Solicitors conclude that while a competent condition could be drafted, they consider it likely that it could be successfully challenged – either by an appeal against the condition or by a s.42 application in due course (which could also be appealed if refused).

In respect of the possibility of limiting the use of the development by Legal Agreement, Brodies Solicitors state that they:

Consider such a restriction could in theory satisfy the tests for planning obligations in Circular 3/2012, but, again they consider it likely that an obligation could be successfully challenged. Circular 3/2012 notes that there is a limited role for obligations in restricting the use of land or buildings, and that restrictions on use are rarely appropriate and should generally be avoided as they can be intrusive, resource-intensive, difficult to monitor and enforce and can introduce unnecessary burdens or constraints. The same concerns about justification would apply here as would apply in the case of a condition.

For these reasons, while a planning obligation might be used, it would be susceptible to challenge at a later date through the s.75A process with the possibility of an appeal to a Reporter.

For the reasons summarised above, officers have not included such a condition within the list of suggested planning conditions contained below. Neither are officers recommending that Members consider the use of a planning obligation in this case.

- Appropriate conditions and reasons to attach to any consent should the Members of the LRB be minded to approve this application.

Comment: Officers maintain their previously stated opinion that planning conditions seeking to secure the necessary road improvements, seeking to clarify the suitability of the existing bridge/culvert and to secure any necessary improvements, and seeking to secure the necessary road safety audit / risk assessment / traffic management plan would, in whole or in part, fail the necessary legal tests for the use of planning conditions.

However, should Members decide to set aside the advice of officers, the following planning conditions are suggested:

1. *The development shall be implemented in accordance with the details specified on the application form dated **31/08/20**; 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
<i>Site and Location Plans</i>	<i>101</i>		<i>01/09/20</i>
<i>Site Plan Showing Aerial Image</i>	<i>102</i>		<i>01/09/20</i>
<i>Proposed Holiday Pod No. 1 – Plans, Sections & Elevations</i>	<i>103 a</i>		<i>01/09/20</i>
<i>Proposed Holiday Pod No. 2 – Plans, Sections & Elevations</i>	<i>104 a</i>		<i>01/09/20</i>
<i>Supporting Statement (7 Pages)</i>			<i>01/09/20</i>

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>

- 2. Notwithstanding the provisions of Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 the residential accommodation hereby approved shall be used for short term holiday occupancy only and not as a main residence and shall not be occupied by any family, group or individual for a cumulative period of more than three calendar months in any one year. A register showing dates of arrivals and departures shall be maintained at the premises and shall be available at all reasonable times for inspection by the Planning Authority.*

Reason: In order to define the permitted occupancy having regard to the fact that the premises are unsuitable for occupation as a permanent dwelling due to their size and construction, and having regard to the relevant provisions of the Development Plan.

Note to Applicant:

For the avoidance of doubt this permission only provides for the occupation of the premises on a short term basis on the grounds that the development is unsuited to full time residential occupation. Specifically the occupation of the premises as a dwellinghouse or dwellinghouses shall require the benefit of a separate planning permission.

- 3. No development shall commence until details of the required improvements to the service road and connection with the existing public road have been submitted to and approved by the planning authority. Such details shall incorporate:*

- i) A vehicular access layout providing a road from the junction with the U128, Soroba Hill Road, extending for 33 metres or thereabouts (including the bridge/culvert) in a southerly direction, to the Soroba House Hotel/Soroba Lodge junction on the private track, over which the public has a right of access in terms of the Roads (Scotland) Act 1984.*
- ii) The junction with the existing public road improved to provide visibility splays of 2.4 metres to point X by 42 metres to point Y formed from the centre line of the junction.*

- iii) *A turning head for the public service vehicle to be located to the south of the bridge, opposite the Soroba House Hotel/Soroba Lodge junction.*

Prior to work starting on site, the junction with the existing public road shall be fully formed and surfaced and the visibility splays shall be cleared of all obstructions such that nothing shall disrupt visibility from a point 1.05 metres above the junction at point X to a point 0.6 metres above the public road carriageway at point Y. The visibility splays shall be maintained clear of all obstructions thereafter.

All access roads and footways granted consent shall be constructed to at least base course level prior to any work starting on the siting/erection of the 'holiday pods' which they are intended to serve and the final wearing surface of the roads and footways shall be applied concurrently with the first occupation of the 'holiday pods'.

Reason: In the interests of road safety and to ensure the timely provision of a service road commensurate to the scale of the overall development.

4. *No development shall commence until a detailed structural survey of the existing bridge/culvert has been submitted to and approved in writing by the planning authority in consultation with the Council's structures team. The required survey shall be prepared by a qualified structural engineer and shall be sufficient to certify that the existing bridge/culvert is able to safely accommodate up to 44 gross metric tonnes multi axle heavy goods vehicles. Or, should such certification not be demonstrated, provide a detailed written schedule and specification of the works necessary to improve or replace the existing bridge/culvert in order that it will accommodate vehicles of the type and weight specified in above.*

Any improvement/rebuilding/replacement works agreed by virtue of the above requirements must be fully completed to the satisfaction of the planning authority in consultation with the Council's structures team before any other part of the development commences.

Reason: In the interests of road safety.

5. *No development shall commence until a detailed written safety audit / risk assessment / traffic management plan sufficient to ascertain and mitigate any implications caused by the proposed development both during construction phase and on completion of the development is submitted to and approved in writing by the planning authority.*

Any roads improvements or road management strategies agreed by virtue of the above requirements must be fully completed to the satisfaction of the planning authority in consultation with the Council's roads engineer, Sustrans, Scotways and any other stakeholders before any other part of the development commences.

Reason: In the interests of road safety due to the fact that the proposed access track is a shared primary school link path/cycle path, with the cycle path being part of the core path network.

6. *Notwithstanding the provisions of Condition 1, the development shall incorporate a surface water drainage system which is consistent with the principles of sustainable urban drainage systems (SuDS) compliant with the guidance set out in CIRIA's SuDS Manual C753. The requisite surface water drainage shall be operational prior to the development being brought into use and shall be maintained as such thereafter.*

Reason: To ensure the provision of an adequate surface water drainage system and to prevent flooding.