

**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 2008 relative to applications for Planning Permission or Planning Permission in Principle**

---

**Reference No:** 22/00921/PP

**Planning Hierarchy:** Local Application

**Applicant:** Mr Paul David Barker

**Proposal:** Application for Discharge of Section 75 Obligation relative to Planning Permission 97/01526/DET

**Site Address:** Melda House, Kilfinan, by Tighnabruaich

---

**DECISION ROUTE**

**Local Government Scotland Act 1973**

---

**(A) THE APPLICATION**

**(i) Development Requiring Express Planning Permission**

Discharge of Section 75 Obligation relative to Planning Permission 97/01526/DET

**(ii) Other specified operations**

None

---

**(B) RECOMMENDATION:**

It is recommended that the Section 75 obligation relative to Planning Permission 97/01526/DET be discharged.

---

**(C) HISTORY:**

Planning Permission (ref: 01/92/0293) was granted on 11<sup>th</sup> August 1992 for the formation of a car park at the site.

Planning Permission (ref: 01-93-0363) was granted on 1<sup>st</sup> July 1993 for the formation of fishing facilities at the site for a temporary period of three years.

An application for Planning Permission (ref: 97/00968/DET) was refused on 8<sup>th</sup> September 1997 for a dwellinghouse, office and shop on the site.

Planning Permission (ref: 97/01526/DET) was granted on 7<sup>th</sup> April 1998 for the erection of a dwellinghouse, office and shop on the site. The approval was issued upon the

conclusion of a Section 75 obligation tying the ownership of the dwellinghouse, office and shop to the fishing enterprise that existed at Loch Melldalloch.

Planning Permission (ref: 02/01555/DET) was granted on 10<sup>th</sup> October 2002 for amended access arrangements and the removal of Condition 2 in relation to permission 97/01526/DET.

Non Material Amendment (ref: 03/00711/NMA) was granted on 6<sup>th</sup> May 2003 for an amendment to the position of the building.

Non Material Amendment (ref: 10/00178/NMA) was granted on 4<sup>th</sup> March 2010 to incorporate an amended door design; deletion of window; and installation of two dormer windows.

Non Material Amendment (ref: 10/01012/NMA) was granted on 28<sup>th</sup> June 2010 to incorporate alterations in window sizes.

Non Material Amendment (ref: 12/02720/NMA) was granted on 18<sup>th</sup> December 2012 for the addition of two velux windows in the dining area of the building.

---

**(D) CONSULTATIONS:**

Not applicable.

---

**(E) PUBLICITY:**

Not applicable.

---

**(F) REPRESENTATIONS:**

None.

---

**(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 eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** No
- (v) **Supporting Statement:** Yes

---

**(H) PLANNING OBLIGATIONS**

- (i) **Is a Section 75 obligation required:** No

The current application seeks to discharge the existing Section 75 obligation

---

- (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 (26<sup>th</sup> March 2015)**

LDP STRAT1 – Sustainable Development  
LDP DM1 – Development within the Development Management Zones  
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 Supplementary Guidance (approved March 2016)**

SG LDP ENV13 – Development Impact on Areas of Panoramic Quality (APQs)  
SG LDP HOU 1 – General Housing Development Including Affordable Housing Provision  
SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes  
SG LDP TRAN 6 – Vehicle Parking Provision  
SG2 Sustainable Siting and Design Principles

- (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)  
Planning History  
Circular 3/2012: *Planning Obligations and Good Neighbour Agreements*  
Letter from Chief Planning Officer to Planning Authorities dated 4<sup>th</sup> November 2011 in respect of limitations on occupancy

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 relevant provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:

Policy 23 – Tourist Development, Accommodation, Infrastructure and Facilities

Policy 26 – Informal Public Outdoor Recreation and Leisure Related Development

**(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 (PAN41 or other):** No

---

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

#### **Background**

Loch Melldalloch is located halfway along the B8000 road between Millhouse and Kilfinan to the north-west of Tighnabruaich. In 1997, an application for Planning Permission (ref: 97/00968/DET) was submitted for the erection of a dwellinghouse, office and shop on land between the south-west corner of the loch and the main public road.

The applicant at the time (Mr Neil Jack) had been developing the commercial fishing potential of Loch Melldalloch for some years previously through the provision of stock (brown trout), infrastructure (access tracks, jetty, etc.) and basic facilities (temporary shelter). It was claimed, however, that the lack of on-site facilities and the requirements of managing live fish stock meant that the commercial fishing business could not be developed to its full potential.

A claim of locational and operational need was put forward that explained the benefits of introducing a constant on-site presence: passive policing (thereby limiting poaching and unauthorised fishing); security/ticket control; essential storage; business base (office); assistance and welcome for anglers and tourists; shelter and amenities for customers; provision of angling-related supplies for loch users and greater marketing opportunities (to passers-by, tourists, etc.).

The exceptional circumstances associated with application 97/00968/DET were accepted but it was considered that the proposed scale, massing and design of the building would be particularly overbearing and not in keeping with the character of the area. In addition, the proposed foul drainage arrangements were deemed to be unacceptable. On this basis, Planning Permission was refused on 8<sup>th</sup> September 1997.

A fresh application (ref: 97/01526/DET) was subsequently submitted and the issues associated with the previous proposal had been satisfactorily addressed. A more appropriate massing had been achieved for the building and, in design terms, it was reminiscent of a large farmhouse with the presentation of a more traditional gable end on its most prominent, south east-facing elevation. Finishes such as natural slate and timber sash and casement windows would also lend a more traditional appearance to the building. In addition, the private sewage system was technically acceptable.

After consideration by the Bute and Cowal Area Committee on 2<sup>nd</sup> November 1997, Planning Permission was granted on 7<sup>th</sup> April 1998 subject to the conclusion of a Section 75 agreement (now obligation). This obligation was considered necessary as it underpinned the locational and operational need claim associated with the application.

Works commenced on the development prior to the expiry of permission 97/01526/DET on 7<sup>th</sup> April 2003 and it is understood that this was a self-build project by Mr Barker with the consequence that construction has taken a significant number of years.

### **Section 75 Obligation**

There are two principal restrictions contained in the First Clause of the Section 75. The first provides that the dwellinghouse, office and shop shall not be owned, leased or otherwise occupied independently from the existing fishing venture and the second restriction is the declaration that the dwellinghouse, office and shop shall in all time coming be conveyed, leased or otherwise disposed of as a single unit, along with the fishing venture, held under one title.

Whilst the wording of the Section 75 does not specifically tie either the fishing venture or the dwellinghouse, office and shop to the whole of the original '*Development Site*' (which covers approximately 25 hectares), the fishing venture was intrinsically linked to Loch Melldalloch so it is reasonable to infer that the loch is part of the "*one title*" referred to in the First Clause of the Section 75.

In summarising the above,

- A supporting statement was submitted by the applicant at the time in relation to application 97/01526/DET and this was accepted as demonstrating a locational and operational need for a dwellinghouse, office and shop in association with the fishing venture at Loch Melldalloch
- Officers evaluated the siting, design and appearance of the building and considered it to be acceptable
- The use of the Section 75 agreement (now obligation) reflected custom and practice at that particular time

### **The Applicant's Case**

Mr Paul Barker (the current applicant) has submitted a Supporting Statement, which can be summarised as follows:

- Mr Barker bought the land and loch from the original applicant, Mr Neil Jack, in 2002 and the sale particulars made mention of a possible business income from the fishing venture. He found this to be a particularly attractive proposition as he already owned several businesses and was starting to look at winding down some of them for a better work/life balance
- At the outset, he was based in a touring caravan on a part-time basis on the site and he set up a deal with the nearby Kilfinan Hotel and Melldalloch Holiday Lodges to sell day tickets, so that it was possible for people to pay to fish in his absence. He advises that this was not a great success and the amount of income was trivial
- He states that the overheads associated with damage and antisocial behaviour were endless. He describes removing litter by the wheelbarrow load from the

banks of the loch and from the small island that was accessed by a bridge. He feels that the source of the litter was not all due to the fishing activity

- He mentions that there were also serious cases of criminality over the years, including the emptying of his diesel tank (some 300 litres) in May 2005; the breaking into his caravan and its occupation over a period of time in October 2008; and the breaking up of a fence for use as fire wood in September 2009
- In January 2011, the applicant decided to remove the bridge to the island and this, coupled with the sale of the Kilfinan Hotel to new owners, resulted in a natural decline in fishing activity. He began to spend more time on the site to facilitate the building of the house and there was a small amount of fishing activity at this time; however, the takings were insufficient to pay the public liability insurance premium
- In 2012, he decided that the fishing venture was not worthwhile and considered it to be closed. As the business is long gone and is never likely to be revisited, the applicant can see no justification in keeping the Section 75 that refers specifically to the “*fishing venture*”
- He considers that having the Section 75 associated with the property is a blight that is currently preventing the reclaim of VAT on the house build
- Looking into the future when he is no longer fit and able to live at the site, he is of the opinion that the sale of the property would be adversely affected by the presence of the Section 75 and its impact on the ability of a buyer to obtain mortgage funding

### **Assessment of Request to Discharge Section 75 Obligation**

Over the last ten years or so, the use of Section 75 obligations as an appropriate mechanism to underpin support for housing required in association with crofting; agricultural employment; and other rural businesses has been phased out.

In situations where Planning Permission would not normally be given for croft and agricultural dwellinghouses but an exceptional case has been demonstrated, the Council normally attaches conditions requiring the permission to be implemented in accordance with a business case / development plan.

The current request relates to a historic application where there was no condition linking the occupation of the dwelling to a submitted business plan. However, the fishing venture at the loch was the principal element of the locational and operational need for the development and was accepted by both officers and Members in the decision to approve the dwellinghouse.

The officer’s report at the time also states that, “*after a long and careful scrutiny of the area, I consider that this is the best available site for development within the vicinity of the loch should the operational need and requirement to have a physical presence by the loch be accepted.*” In addition, whilst acknowledging that the proposal was a relatively large building, it would be “*in keeping with the character of the overall area and will not have a seriously detrimental visual impact on the wider Scenic Area.*”

In this particular case, and according to the applicant, he did attempt to continue with the fishing venture after his purchase of Loch Melldalloch and its associated land in 2002. However, due to the combination of factors that he has set out in his supporting statement, the business did not prove to be viable.

The reality of the situation is, therefore, that the fishing business no longer exists and this is clearly a significant factor. When added to the other material considerations – that the development is visually acceptable; the advice of the Chief Planner, Scottish Planning Policy and Circular 3/2012; and appeal decisions made in recent years – it is considered reasonable to accede to the request for the discharge of the Section 75 obligation.

---

**(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 circumstances of this case are as follows:

- The dwellinghouse has been determined to be visually acceptable
- The fishing business at Loch Melldalloch to which the dwellinghouse was tied has ceased
- The permission and Section 75 for 97/01526/DET was approved many years prior to the currently agreed appropriate control mechanisms
- Appeal decisions over the last six years indicate that the use of the Section 75 would not be supported at appeal and there would be a risk of an expenses award against the Council in any appeal.

It is considered reasonable in these circumstances that approval should be granted for the discharge of the Section 75 obligation relative to Planning Permission 97/01526/DET.

---

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

N/A

---

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

---

**Author of Report:** Steven Gove

**Date:** 28<sup>th</sup> July 2022

**Reviewing Officer:** Howard Young

**Date:** 28<sup>th</sup> July 2022

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