

STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

22/0004/LRB

**REFUSAL OF PLANNING PERMISSION 19/01858/PP FOR ALTERATIONS TO EXISTING
OFFICES AND FUNERAL FACILITIES AT GROUND FLOOR LEVEL AND ALTERATIONS
AND CHANGE OF USE OF FIRST AND SECOND FLOOR WORKSHOPS AND STORES
TO CREATE 4 FLATS**

37/39 STEVENSON STREET, OBAN

30/06/22

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Hamish Hoey and Son ('the appellant').

Planning permission 19/01858/PP for the alterations to existing offices and funeral facilities at ground floor level and alterations and change of use of first and second floor workshops and stores to create 4 flats at 37/39 Stevenson Street, Oban ("the appeal site") was refused by the Planning Service under delegated powers on 22/03/22.

The planning application has been appealed and is subject of referral to a Local Review Body.

DESCRIPTION OF SITE

37/39 Stevenson Street is a two and a half storey stone and slate built structure situated within the main town centre of Oban which is currently being used as a joinery, building and funeral undertaking business.

As set out in the Report of Handling provided at Appendix 1 of this submission, whilst the proposed development complies with the adopted 'Argyll and Bute Local Development Plan' 2015 in all other respects, due to the proposal potentially placing buildings and persons at flood risk, it is considered to be contrary to Scottish Planning Policy, SEPA's Flood Guidance, Local Development Plan Policy and Supplementary Guidance and therefore planning permission was refused by the Planning Authority.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Act, regard is to be had to the development plan, and all other material planning considerations and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

STATEMENT OF CASE

Argyll and Bute Council considers the determining issues in relation to the case are as follows:

- *Whether the proposed development complies with Scottish Planning Policy, SEPA's Flood Guidance documents and the Council's Flood Risk Policy and Supplementary Guidance.*

The ROH (Appendix 1) sets out the Council's full assessment of the application in terms of Development Plan policy and other material considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

It is not considered that any additional information is required in light of the appellant's submission. The issues raised were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal is small-scale, has no complex or

challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

COMMENT ON APPELLANT'S SUBMISSION

- The appellant contends that the matters which led to the refusal of planning permission are not material considerations requiring the automatic need to refuse permission on the grounds of the objection from SEPA.

Planning Authority Comment: *As set out in the Report of Handling, Scottish Planning Policy, SEPA Flood Guidance and Local Development Plan Policy and Supplementary Guidance advocate the avoidance of built development within areas identified as being at medium to high risk of flooding.*

The proposed development is not sustainable in terms of flood risk as it would result in the introduction of residential units into an area identified as being at medium to high risk of flooding and which increases the land use vulnerability of the site, contrary to the principles of Scottish Planning Policy, the SEPA Development Management Guidance on Flood Risk and the SEPA Flood Risk and Land Use Vulnerability Guidance. Furthermore the development is contrary to Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 of the adopted 'Argyll and Bute Local Development Plan' 2015 which require development to be located out with areas of significant flood risk.

CONCLUSION

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

Taking all of the above into consideration, as set out above, it remains the view of the Planning Service, as set out in the Report of Handling appended to this statement, that the proposed development is not sustainable in terms of flood risk as it would result in the introduction of residential units into an area identified as being at medium to high risk of flooding and which increases the land use vulnerability of the site, contrary to the principles of the policies and guidance referenced above and also in the Report of Handling.

Taking account of the above, it is respectfully requested that the application for review be dismissed.

Notwithstanding the above, should Members be minded to uphold the Review, it will be necessary for 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.

APPENDIX 1

Report of Handling Relative to 19/01858/PP

Argyll and Bute Council
Development & Economic Growth

Delegated 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: 19/01858/PP
Planning Hierarchy: Local Development
Applicant: Hamish Hoey & Son
Proposal: Alterations to Existing Offices and Funeral Facilities at Ground Floor Level and Alterations and Change of Use of First and Second Floor Workshops and Stores to Create 4 Flats
Site Address: 37/39 Stevenson Street, Oban

DECISION ROUTE

Section 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Alterations to offices and funeral facilities at ground floor level
- Change of use of first and second floor workshops and stores to create 4 flats

(ii) Other specified operations

- Connection to public water main
 - Connection to public drainage system
-

(B) RECOMMENDATION:

Having due regard to the Development Plan and all other material considerations, it is recommended that planning permission be **REFUSED** for the reasons appended to this report.

(C) CONSULTATIONS:

Roads Authority

Report dated 04/10/19 advising that the proposal is within the town centre where there is no requirement to provide parking and therefore they raise no objection.

Scottish Water

Letter dated 25/09/19 advising that they have no objection to the proposed development which would be serviced from the Tullich Water Treatment Works and Oban Waste Water Treatment Works. Scottish Water do however advise that they are unable to confirm capacity and advise the applicant to submit a Pre-Development Enquiry Form to them for consideration.

Scottish Environment Protection Agency (SEPA)

In their response to the application dated 13/02/20 SEPA maintained their previous objection of 25/10/19 to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. SEPA advise that Flood Risk Assessment (FRA) updates or flood studies, if available, would require to be submitted to allow them to consider removing their objection. Commenting on the FRA submitted by the Agent in support of the proposal, SEPA advise that it was undertaken in 2009 and not for the specific development subject of the current application, albeit one on the same watercourse. SEPA advise that, in the intervening period, new hydrological modelling approaches have been developed, that climate change allowances for river flow and sea level rise have also been updated and these would have to be considered. SEPA conclude by advising that they also have concerns about coastal/tidal flooding for this area which has not been considered in the FRA, and whilst noting that some local measurements have been undertaken, but they still have concerns.

In light of these comments the Agent submitted supporting information to SEPA for consideration, details of which are outlined in the assessment at Section P below, and to which the Planning Authority sought a final comment from SEPA on. In a letter dated 17/03/21 SEPA, in summary, reiterated the comments that they provided in their previous responses to the application but did allude to the fact that, should a site specific FRA for the proposed development be undertaken, it is likely that it would only serve to confirm the serious flood risk to the site. On this basis SEPA confirmed that their objection to the proposed development has to be sustained.

JBA Consulting Ltd (JBA)

Report dated 21/10/19 deferring their decision until details are received sufficient to demonstrate that emergency pedestrian access/egress is achievable within a 1 in 200 year flood event.

The above represents a summary of the issues raised. 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>.

(D) HISTORY:

06/00942/DET & 06/00939/LIB

Alterations to undertakers premises and conversion of stores to residential flats –
Granted: 28/06/06 & 26/06/06

01/01211/LIB

Internal alterations – Granted: 29/08/01

(E) PUBLICITY:

The proposal has been advertised in terms of Regulation 20 and Neighbour Notification procedures, overall closing date 24/10/19.

(F) REPRESENTATIONS:

No representations 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: Yes

The application is accompanied by a Supporting Statement outlining the scope of the proposed development.

(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

Is a Section 75 agreement 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' Adopted March 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 5 – Supporting the Sustainable Growth of our Economy

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

Local Development Plan Schedules

‘Supplementary Guidance to the Argyll and Bute Local Plan 2015’ (Adopted March 2016)

Landscape and Design

SG LDP ENV 13 – Impact on Areas of Panoramic Quality (APQs) (*North West Argyll (Coast) APQ*)

SG LDP ENV 14 – Landscape

Historic Environment and Archaeology

SG LDP ENV 16(a) – Impact on Listed Buildings

Support for Business & Industry: General

SG LDP BUS 1 – Business & Industry Proposals in Existing Settlements and Identified Business & Industry Areas

General Housing Development

SG LDP HOU 1 – General Housing Development Including Affordable Housing Provision

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Addressing Climate Change

SG LDP SERV 7 – Flooding and Land Erosion – Risk Framework

SG LDP Sust Check – Sustainability Checklist

Transport (Including Core Paths)

SG LDP TRAN 4 – New & Existing, Public Roads & Private Access Regimes

SG LDP TRAN 6 – Vehicle Parking Provision

SG LDP TRAN 7 – Safeguarding of Airports

(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 (SPP), 2014
- Argyll and Bute Sustainable Design Guidance, 2006
- SEPA Development Management Guidance: Flood Risk

- SEPA Flood Risk and Land Use Vulnerability Guidance
- Historic Environment Policy for Scotland (HEPS), 2019
- HES Managing Change in the Historic Environment – Setting, 2016
- HES Managing Change in the Historic Environment – Interiors, 2016
- HES Managing Change in the Historic Environment – Windows, 2018
- 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. The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:

- Policy 35 – Design of New and Existing, Public Roads and Private Access Regimes
- Policy 43 – Safeguarding of Aerodromes

(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

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

Planning permission is sought for alterations to existing offices and funeral facilities at ground floor level and alterations and change of use of first and second floor workshops and stores to create 4 flats at 37/39 Stevenson Street, Oban.

37/39 Stevenson Street is a Category C Listed Building (LB) and accordingly an associated application for Listed Building Consent, reference 19/01857/LIB, is currently with the Planning Authority for consideration.

In terms of the adopted 'Argyll and Bute Local Development Plan' (LDP) 2015 the application site is located within the settlement 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 3 assesses applications for their impact on the natural, human and built environment. As detailed above the building is a Category C LB which requires the provisions of SG LDP ENV 16(a) to be considered the main of which is to protect LBs, and their settings, from inappropriate development which would have a detrimental impact. The site is also within the North West Argyll (Coast) APQ which requires the provisions of SG LDP ENV 13 to be considered in development proposals which seeks to ensure that developments are of an appropriate scale and design and do not detract from the landscape within which they are proposed.

Policy LDP 5 and SG LDP BUS 1 give support to new and existing businesses which help deliver sustainable economic growth throughout the area.

Policy LDP 9 seeks 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. SG 2 expands on this policy seeking developments affecting LBs to be of the highest quality, design and finishes to ensure that there is no significant adverse impact on the appearance or setting of the LB.

Historic Environment Policy for Scotland (HEPS) 2019 seeks to protect LBs, and their settings, from inappropriate developments which would have a detrimental impact. The Managing Change suite of publications provide further advice on setting, interiors and windows to ensure that developments affecting a LB are of the highest quality, design and finishes to ensure that there is no significant adverse impact on the appearance or setting of the LB.

37/39 Stevenson Street is a two and a half storey stone and slate built structure situated within the main town centre of Oban which is currently being used as a joinery, building and funeral undertaking business.

The application is seeking to secure permission to provide enhanced facilities at ground floor level to serve the undertaker aspect of the business with the upper floors redeveloped to provide four flats, two on each floor. The majority of works involved in the proposal are internal to create the necessary accommodation. A site inspection of the property identified that there are no features of architectural or historic importance that would be lost as a result of the proposed internal works to facilitate the redevelopment. Externally an existing window at ground floor level will be changed to a timber door to provide a dedicated access to the proposed flats with the existing store doors and office doors at ground floor level changed to timber units. New timber windows are proposed within the existing window openings throughout the building with new openings formed in the rear elevation of the upper floors to serve the internal layout of the proposed flats, four of which are dormer windows which match the existing dormer windows to the front elevation of the building. Three rooflights are proposed within the roof plane of the building, one to each side elevation and one to the front elevation. Finally, the roof will be re-slatted in Spanish slate which the Planning Authority has previously accepted on LBs, however the finer detail of the specific slate will be sought by condition to ensure it is a suitable replacement.

Overall, it is considered that the proposed scheme to refurbish the existing building has been sympathetically designed to ensure that the proposed development will integrate well within the site and will have no significant adverse impact on the LB, its setting or its setting within the wider APQ. The design and finishes of the

proposed development are considered to be acceptable and in compliance with the requirements of the policies and guidance set out above.

No change to the existing servicing or infrastructure arrangements currently serving the building are proposed as part of this application. Such details comprise utilisation of existing on-street parking provision and public water and drainage connections. The Council's Roads Engineer has advised that the proposal is within the town centre where there is no requirement to provide parking and therefore they raise no objection. Scottish Water advised that they have no objection to the proposed development which would be serviced from the Tullich Water Treatment Works and Oban Waste Water Treatment Works but do advise that they are unable to confirm capacity and advise the applicant to submit a Pre-Development Enquiry Form to them for consideration. In this regard the proposal is considered to be acceptable in terms of Policy LDP 11, SG LDP TRAN 4 and SG LDP TRAN 6 of the LDP and Policy 35 of pLDP2 which collectively seek to ensure that suitable infrastructure is available to serve developments.

Due to the proximity of the site to the Black Lynn Burn, comments were sought from JBA and SEPA. JBA deferred their decision until such time as details of emergency pedestrian access/egress to the site achievable under a 1 in 200 year flood event were demonstrated. SEPA have objected to the proposal on flood risk grounds advising that the site lies within the medium likelihood (0.5% annual probability or 1 in 200 year return period) fluvial and coastal flood extents as shown within the SEPA Flood Map and therefore may be at medium to high risk of flooding. SEPA also advise that they have a number of records of historical flooding in the surrounding area attributed to both coastal, river and surface water flooding.

In light of these comments the Agent submitted supporting information to JBA and SEPA for consideration.

In summary, JBA advised that the supporting information submitted was mainly qualitative and did not consider a 200 year flood event and, whilst the accompanying report was quantitative, it was dated 2009 and would need to be updated. JBA recommended that the applicant confirm with SEPA that there is no objection in principle to the development, and if this is the case, a quantitative FRA considering the 200 year event be undertaken which would require to consider joint probability between coastal and fluvial flooding and should consider how safe access and egress would be managed.

In their response to the supporting information SEPA advised that they maintained their objection to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to SPP. SEPA advised that FRA updates or flood studies, if available, would require to be submitted to allow them to consider removing their objection. Commenting on the supporting information submitted by the Agent in support of the proposal, SEPA advised that it was undertaken in 2009 and not for the specific development subject of the current application, albeit one on the same watercourse. SEPA advised that, in the intervening period, new hydrological modelling approaches have been developed and that climate change allowances for river flow and sea level rise have also been updated and these would have to be considered for the site. SEPA concluded by advising that they also have concerns about coastal/tidal flooding for this area which has not been considered in the FRA, and, whilst noting that some local measurements have been undertaken, still raise concerns.

In response, the Agent has advised that, in his opinion and given the earlier objections raised by JBA and SEPA, there is no likelihood that either objection will be withdrawn against a background of SEPAs own flood prediction modelling. Following the refusal to accept a FRA for a site located further upstream at the Black Lynn Burn at Lochside Street prepared in 2009, the Agent advised that their Client's local Consultant has confirmed that a fresh FRA based on current predictions would be unlikely to demonstrate any lesser risk of 1:200 year event flooding at the application site. The Agent states that it appears that the objections are based on the serious but unlikely coincidence of tidal (and therefore temporary) flooding at the application site with the need for an emergency evacuation of a resident from the proposed flats. The Agent advised that a digital topographic survey of the rock face and banking to the rear of the building was undertaken to investigate the possibility of an alternative emergency escape route from the top floor to Star Brae. However, given the relative heights and levels involved, advised that this would require a series of stairs and ramps from the top floor to reach Star Brae to a geometry acceptable to Building Standards, which, in planning terms, would unlikely to be acceptable with stairs, ramps and handrails visible from Star Brae and certain parts of Stevenson Street, Airds Crescent and Combie Street, forming a visible backdrop to the LB. The Agent states that, in the unlikely event of the need to use this emergency access/escape, the route from the top floor of the building across these stairs and ramps for evacuation to the even steeper Star Brae and a safe vehicle location adjacent to the Free Church is likely to be even more hazardous and unsuitable than evacuation through a partially flooded Stevenson Street at the front of the building. The Agent concluded by stating, notwithstanding the authority of the Statutory Consultees and their Flood Assessment Modelling, refusal of this application on the basis of short term tidal flooding on a 1:200 year event coinciding with an emergency in the building will effectively sterilise this prominent LB in its town centre location for use in adaptation to much needed town centre housing.

Officers can make no comment on the above other than to acknowledge the applicant's unwillingness to provide the additional information required by both SEPA and the Council's flood risk advisor.

The comments submitted by the Agent were passed to SEPA for final comment who have made the following summary points as their final consultation response:

- The site is shown to be at risk from fluvial and coastal flood sources on our SEPA flood maps (there is also a surface water risk).
- Our flood records state that Stevenson Street flooded in 2005 to a depth of 2-3 feet, from tidal/coastal inundation only.
- The street could also flood from the watercourse on its own, or in combination with the tide – there is a degree of tide locking of the culverts and drains in this area even when the tide is high (but not over the quayside) which could cause serious fluvial flooding if the burn is backed-up.
- As such, we previously requested a detailed FRA that is site-specific to the building in question – however, this has not been provided. If one was undertaken, it is likely that it would only serve to confirm the serious flood risk to the site.

- The proposal represents an increase in vulnerability from Least to Highly vulnerable – if the building was to remain in Least vulnerable use (e.g. offices, services, workshop) then we would have no issue with its redevelopment/reuse.
- The proposal to build stairs up the cliff behind the building is unacceptable – as stated in our published guidance, egress routes have to be safe, flood free and account for people of all abilities (e.g. young, old, infirm, wheelchair bound etc).
- In conclusion, our objection has to be sustained.

In light of the above, whilst the proposed development complies with the LDP in all other respects, due to the proposal potentially placing buildings and persons at flood risk, it is considered to be contrary to SPP, SEPA's Flood Guidance documents as well as the Council's own flood risk policy and SG and therefore it is recommended that planning permission be refused.

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

(R) Reasons why Planning Permission should be Refused

See reasons for refusal below.

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

N/A

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

Author of Report: Fiona Scott

Date: 17/03/22

Reviewing Officer: Tim Williams

Date: 22/03/22

Fergus Murray
Head of Development and Economic Growth

REASONS FOR REFUSAL RELATIVE TO REFERENCE 19/01858/PP

1. Scottish Planning Policy, SEPA Flood Guidance and Local Development Plan Policy advocate the avoidance of built development within areas identified as being at medium to high risk of flooding. In limited circumstances it may be appropriate for development to be permitted within these areas however the proposed development does not satisfy the required criteria.

The proposed development is not sustainable in terms of flood risk as it would result in the introduction of residential units into an area identified as being at medium to high risk of flooding and which increases the land use vulnerability of the site, contrary to the principles of Scottish Planning Policy, the SEPA Development Management Guidance on Flood Risk and the SEPA Flood Risk and Land Use Vulnerability Guidance. Furthermore the development is contrary to Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 of the adopted 'Argyll and Bute Local Development Plan' 2015 which require development to be located out with areas of significant flood risk.

There are no material considerations which are of sufficient weight meriting the departure from national and local planning policy.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **19/01858/PP**

(A) Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing. **No**

(B) The reason why planning permission has been refused:

See Reasons for Refusal Above

