

Benview
Tayinloan
TARBERT
Argyll
PA29 6XG

7 December 2010

Head of Democratic Services and Governance
Argyll and Bute Council
Kilmory
Lochgilphead
PA31 8RT

Dear Sir

Reference 10/0009/LRB - 08/00231/OUT
Mr & Mrs James Blair
Site for the erection of two dwelling houses
Land south of Achanadriane Farm, by Tayinloan

Thank you for the opportunity to make further representations regarding this case review.

LEGAL COMMENTS

We have sought legal opinion from Mr Murray Shaw of Biggart Baillie. Mr Shaw is one of Scotland's leading experts on Planning matters. Our following comments are based on his assessment of the legal situation of this case and on his legal opinion.

The Review Board has established that the applicants failed to serve Notice 1 to all third party land owners as laid down by **The Town and Country Planning (Development Planning) (Scotland) Regulations 2008** as follows:

15.—(1) The applicant is to give notice in the form set out in Schedule 1 to any person (other than the applicant) who at the beginning of the prescribed period is the owner of any land to which the application relates or an agricultural tenant.

On the 3 November 2010 The Review Board made a request that the above notice be served on Largie Estates.

However, **The Town and Country Planning (Development Planning) (Scotland) Regulations 2008** states that a planning application can only become valid when the last of the items or information, laid down by statute, is received by the planning authority as follows:

Validation Date

14.—(1) An application under any of regulations 9 to 12 is to be taken to have been made on the date on which the last of the items or information required to be contained in or accompany the application in accordance with regulations 9, 10, 11 or 12 respectively is received by the planning authority.

There is no provision in the planning legislation that allows for an application to be deemed valid, other than by meeting the requirements contained under section 14-1 reproduced above. It is Mr Shaw's opinion that the original planning decision was based on an incomplete, and therefore, invalid planning application. Further, as the Board is a review board, they do not have the legal powers to allow the application to be validated at this stage. Similarly, it is not possible for the applicants to make the application valid at this stage. It is Mr Shaw's view that the only option left open to the Board is to declare the application to be invalid.

We would therefore request that the Local Review Board determines the application, and therefore the original planning decision, to be invalid. Should it fail to do so, we would request that the Board states how it has arrived at its opinion that an invalid planning application can be made valid during the Local Review Board process, providing references to the legislation underpinning that opinion.

We would also remind the Board, as well as the applicants and interested parties, that should the Board fail to determine the application, and therefore the original planning decision, to be invalid, we have the right to petition the Court Of Session for judicial review within a period of six weeks from the date of the Board's decision.

FAIRNESS COMMENTS

Should the Board determine the application to be valid, it would seem that the all important issue is the date that the application becomes legally valid as the differences in material considerations has changed dramatically between 2008 and 2010. In November 2010 there are new owners residing at Achanadriane farmhouse and at Tighnadrochit and we now have the Landscape Capacity Study showing the development site within a red, no development zone. Also, in 2008 it was implied by planning officials that we would have to accept the proposed development, somewhere in the field.

The Regulations clearly state:

Validation Date

14.—(1) An application under any of regulations 9 to 12 is to be taken to have been made on the date on which the last of the items or information required to be contained in or accompany the application in accordance with regulations 9, 10, 11 or 12 respectively is received by the planning authority.

Even if the application could be validated during the review stage, this would suggest that the application can only become complete, and therefore legally valid, on the 4th November, 2010 i.e. the date when the statutory duty of the applicants to serve all notices was met. If this is the case then the new owners of the properties most affected by the development proposals should be allowed the statutory period laid down for them to make representations, and in fact this opportunity should be afforded to the general public, bearing in mind that the application site is now categorised as a red zone under the Landscape Capacity Study. This is a significant change since the original application was advertised, and a significant change in the material considerations.

The change in circumstances, surrounding this application, since 2008 are considerable and are such that this application is likely to attract many objections. The level of objections is a material consideration in any planning application.

It was the applicants who decided to appeal against Planning's original decision and start the Local Review Board process. Unfortunately for them, during these procedures, it was discovered that the applicants had not fulfilled the statutory requirements for a legally valid application. It would seem to us, if the Board does not agree that the application is not valid, that the only fair way to proceed with this application is to declare its validity date as the 4th November 2010 and proceed with re-advertising the application and invite new representations from those interested.

OTHER COMMENT

We would like to point out that the planning application received from the applicants agent, Mr John Campbell, contains a serious error under section 14 - Drainage Arrangements. The applicants have stated that drainage for the two houses will be by way of connection to existing private sewer/septic tank. This statement is false, there are no existing private sewers or septic tanks. Not only does the statement have to be revised, but details have to be specified as regards type of outfall for septic tanks or biodiscs.

We would suggest that the fairest, easiest, quickest and most economic way forward, for all interested parties, is for the applicants to withdraw their appeal and submit a new application.

Yours faithfully

Iain and Kathryn Logan