

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: 09/00385/OUT

Planning Hierarchy: Local application

Applicant: Ardkinglas Estate

Proposal: Erection of mixed development comprising 16 dwellinghouses, 7 commercial units, childcare centre and installation of sewage systems and access improvements.

Site Address: Land adjacent to Ardkinglas Sawmill, Clachan, Cairndow, Argyll

SUPPLEMENTARY REPORT 5

1.0 SUMMARY

The purpose of this supplementary report is to alert Members of the receipt of three further representations and further supporting documentation from the applicant in respect of visibility splays onto the A83(T) .

2.0 FURTHER REPRESENTATION

Three further emails of objection have been received from:

Mr. J.B. Rowlands, Old School, Cairndow (email dated 19th November 2011);

Mr. Ken Pound, Cairndow (email dated 22nd November 2011);

Mrs. Elaine Pound, Cairndow (email dated 22nd November 2011);

The points raised in the objection letters are summarised below:

Mr. Rowlands comments that it was made quite clear at the Hearing that the existing masterplan in relation to this application had been withdrawn. A new revised masterplan has now been submitted. It is quite clear that no consultation with relevant bodies including the community has taken place regarding this masterplan. The Planning department cannot rely on comments relating to a masterplan which no longer exists and that some have never seen. The only observations and comments relate to 'The erection of 16 dwellings 7 commercial units and childcare centre, not the masterplan.

Comment: The new masterplan or spatial context plan CDA 06A (which is an amended version of an earlier version) was circulated to Local Members and Cairndow Community Council on receipt on the 31st October 2011. An earlier version of Masterplan CDA 06 was submitted on 19th October 2010 to consultees. The principal alterations to the Masterplan is that housing development in the Sawmill Field that would be outwith PDA 9/13 has been removed. For the avoidance of doubt, the new Masterplan which was submitted following the Hearing has not been the subject of consultation from the statutory consultees or a newspaper advert.

The further email received from **Ken Pound** (email dated 22nd November 2011) makes the following comments:

1. *The Minutes of the PPSL Public Hearing dated 21 October 2011 failed to reflect Bruce Marshall's question to Ross McLaughlin "is this a minor or major departure from the Local Plan". Ross McLaughlin replied "this cannot be considered a minor departure, this is a major departure from the Local Plan". Head of Governance and Law agreed to review the minutes and reflect the correct record.*

Comment : This matter is currently being investigated by the Head of Governance and Law.

2. *Acknowledge the clarification that the PPSL was requesting a copy of the Masterplan to be submitted to the PPSL following the revised motion tabled by Bruce Marshall. Head of Governance and Law advised that whilst members may yet be minded to approve the application at the next PPSL on 23 November 2011, the Masterplan submitted must be subject to public consultation which is consistent with your comment as minuted following the Hearing. However, the consultation must include statutory consultees and the community and follow the statutory procedure. I advised that the community had not at any time been consulted on any of the Masterplans submitted to planners which is contrary to PAN 81 and, now upon reflection, the Masterplan must also be subject to neighbour notification.*

In the interests of propriety, the Masterplan submitted to Planning on 27 October 2011 cannot be considered as an amended Masterplan. This is a new Masterplan, the former having been withdrawn by the applicant and Bruce Marshall's motion is flawed when he moved that an 'amended' Masterplan should be submitted as there was no Masterplan on the table to be amended and Ross McLaughlin confirmed at the public hearing that this had been withdrawn at the request of the developer. Therefore, the withdrawal of the Masterplan renders planning application 09/00385/OUT invalid as it no longer had a Masterplan attached. Neither the application nor the Masterplan can be considered in isolation which is a requirement of the statutory process. Even if the application were considered valid - and it cannot - and even after full consultation, the PPSL are not empowered in law to approve a 30 hectare Masterplan under a 'local' application. Vivian Dance was wrong in her assertion at the Hearing that the other 28 hectares could be dealt with on a future occasion (which was omitted from the Minutes) and should be familiar that an application cannot be considered given the absence of a Masterplan.

This new Masterplan must now fall within the Town & Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and is required to be classed as a 'major' application. With the Masterplan being in excess of 2 hectares, and having been submitted post August 2009, this fails to comply with the Local Development Plan, Planning etc. (Scotland) Act 2006 and Town & Country Planning (Scotland) Act 1997 and Circular 4/2009 – Development Management Procedures. Also, the application falls within the requirements of an Environmental Impact Assessment – Schedule 2 refers – which clearly states that a hotel/tourist accommodation in excess of 0.5 hectare must have an EIA and housing in excess of + 50 houses/specified industrial floor space.

PDA's within the local plan have no lawful status until they comply with the constraints of the respective PDA within the Local Plan and it would be impossible to 'screen' a PDA for an EIA or Environmental Statement without a detailed Masterplan being submitted which is required to give diagrammatic detail including landscape assessment, density, massing or population equivalent estimations, etc as specified in PAN 83. The newly submitted Masterplan of 27 October 2011 falls woefully short of the criterion identified within PAN 83 and to which the Supplementary Report 4 dated 2 November 2011 refers. The EIA regulations are equally clear on the statutory requirements including sensitive countryside. In addition, statute requires the submission of a Sustainability Checklist and an Area Capacity Evaluation both of which have not been provided.

The PPSL are determined to consider this application as a 'local' application when it is not. Notwithstanding that this is a 'major departure' from the Local Development Plan which Ross McLaughlin affirms, this application can only be determined as a major application and if it

does not comply with PAN 83 falls outside the powers of the PPSL vested to them by Scottish Ministers. Ross McLaughlin in his letter of 18 February 2011 to the developer requested that “a revised application is submitted with a new larger red line boundary to ensure strategic planting is included along with a reduction in density. Finally, greater detail is afforded to the Masterplan to allow a meaningful consultation with stakeholders, consultees and community. Due to the elongated timescales in processing this application there shall be no fee payable on this revised application but it is likely to be treated as a ‘major application’ [which it should have been from the outset] under 26A of the Town and Country Planning (Scotland) Act 1997 if the application site exceeds 2 hectares” which it clearly does with a 30 hectare Masterplan.

It is Government policy that a Masterplan is approved from the outset after which applications could then and only then be submitted piecemeal conforming with the approved Masterplan - this is statutory practice - and this is now supported with reference to Supplementary Report 4 which recommends to Members that a protocol for the handling of cases where masterplans are required but they have not been submitted at the time the related application was submitted and advertised on the basis that consultation ought to be carried out in respect of such plans received during the time an application is under consideration. This application is no exception to the suggested protocol and it is paramount that this application must be the forerunner of that protocol and cannot and should not be considered outside of the proposed protocol. I am sure that had it not been for the failings of the application and shortcomings of the statutory procedure, this protocol would not have even been considered.

Members must also be reminded that they have an abiding and lawful responsibility to the policies, Local Development Plan and statutory requirements and only once compliant with those obligations can they consider any material considerations. It was not the Scottish Government’s remit to local authorities for any departure – let alone a major departure - from statutory planning policy in any event.

Comment : Whilst a revised Masterplan (omitting housing from the Sawmill Field site) has been submitted in support of the proposal, the application site boundary remains the same size as submitted and still less than 2 hectares. This matter was discussed at the Hearing and verbalised as representation during contributions.

3. *Affordable Housing – Consistent with the Government’s 25% housing affordability mandate, it is important to remind the Council that the 25% affordability must be applied to all residential development however large or small in excess of the minimum requirement and therefore it follows that given this Masterplan development of 30 hectares - with yet unspecified housing numbers - it is a statutory requirement for the developer to identify his ability to deliver the 25% affordability and it follows that this must be across the entire 30 hectare site – the statute does not provide for any compromise on this and makes no provision for aspirational Masterplanning - and yet even now the developer seeks to dictate to Planners how and when he will deliver the 25% affordability for “16 houses” the subject of “the application”. The developer has stated that this will be ‘on site’ and can be imposed as a condition for a 2 hectare development - thereby imposing his own agenda – but it is a mandatory requirement under the planning laws to confirm how the 25% affordability will be delivered from the outset.*

Comment : The precise mechanism to secure 25% affordability on the application site only could be secured via a suspensive planning condition that would be consistent for an application for planning permission in principle. This matter was discussed at the Hearing.

4. *Throughout the 2 ½ years of this planning application there has been a consistent failure by both the developer and Planners to comply within the statutory process. More recently, these concerns have become more apparent and I will advise you that until propriety in all aspects of the planning procedures are complied with, I will continue to challenge the Council even if this results in an application for a judicial process.*

Comment : The processing of the application were discussed at the Hearing and both the Councils Complaints Procedure and Judicial process have been discussed with the contributor and Council's Officers.

5. *Planning sent an e-mail to Cllrs Marshall, Simon, McNaughton and Daniel Sumsion, the CCC Convenor and brother of the developer, on 8 November 2011 advising that 'amended' Masterplan CDA 06A had been submitted to the Council. As advised above, this was not an 'amended' Masterplan - as the previous Masterplan had been withdrawn - and, to date, there has still been no consultation with the community or Community Councillors on any Masterplan – including CDA 06A - even though there was a CC meeting on 9 November 2011. If that e-mail was intended to be the consultation process, the information has been suppressed and the next CC meeting is not scheduled until January 2012. I request that you take note of this and that the content of this e-mail forms part of a Supplementary Report to the PPSL for tomorrow's meeting.*

Comment : Statutory consultees have not been issued with a copy of newly submitted Masterplan Drawing however they have seen and commented upon an earlier version in 2010. The revised Masterplan omits housing from the Sawmill Filed site as this is outwith the boundaries of PDA 9/13.

The further email received from **Elaine Pound** (email dated 22nd November 2011) makes the following comments in relation to Supplementary Report 4 dated 2 November 2011 and supporting documentation from the developer dated 27 October 2011:

- *Supplementary Report 4 - Point 2.0*

Footpath - I do not believe a planning condition can be imposed upon the footpath between the development site and Loch Fyne Oyster Bar complex as apparently the footpath does not form part of the application. It was confirmed in Supplementary Report 3 dated 20 October 2011 that "the footpath adjacent to the access road and internal development is included within this application. The footpath connecting the LFO site and application site is not".

The above statement was as a result of an e-mail dated 18 October 2011 which is quoted in that Supplementary Report 3 and, for ease, stated:

"You have not advised why the footpath has not been included within the red line boundary on this application? The footpath must be delineated by the red line which takes the site application well in excess of the 2 hectares. The footpath is referred to in your summarised report - Supplementary Report 2. Please advise".

Therefore, there would appear to be inconsistencies within the Reports/application related to the footpath. The footpath is also incorrectly stated in the letter dated 27 October 2011 (page 1 - section a) from the developer referring to conditions and section 4 - Zones - Phase 2 where it is stated when the footpath will be implemented when it does not appear to form part of the application. Perhaps you can clarify.

Comment : For clarity, the proposed footpath linking the application site to Loch Fyne Oysters complex is outwith the application site boundary but shown on Masterplan Drawing CDA 06A as a 'potential footpath and cycle route'. The eventual details of this footpath and cycle route could be secured by the imposition of a suspensive planning condition as the line of the footpath lies wholly within the applicant's control.

- *Transport Scotland Visibility/Access*

a. Access - Transport Scotland's conditions for the access and layout were quite clear in their response dated 25 August 2011. Point 3 of that letter stated that "prior to any development

commencing a new junction shall be constructed by the applicant to a standard as described in the Department of Transport Advice Note TA 41/95.... complying with Layout 3".

However, the developer has advised in his letter of 27 October 2011 (page 1 - section C) that Layout 3 "will be required before the occupation of any residential units but will not be required for the development of commercial units or a childcare centre". This is totally incorrect as Transport Scotland - as statutory consultee - has made it quite clear that prior to any development the access has to be improved to Layout 3 to comply with safety regulations. It would be foolish to consider HGV's and +80 cars turning into the current access without complying with Transport Scotland's requirements and this condition needs to be addressed and a response to the developer.

The Council should also be reminded that Transport Scotland confirmed that for any Masterplan Layout 3 would be superseded to conform to Layout 5 - a right turn lane - and this condition also needs to be addressed with the developer - this was confirmed and referred to in Supplementary Report 2.

b. Visibility - As advised previously, the visibility splays of 215m required by Transport Scotland are not on land owned by either Transport Scotland or the developer and this has still not been demonstrated as requested by Planning. Whilst photographs have been provided at high tide, they have not been provided at low tide where it is clear that an island exists in the Fyne which is outside of the control of the developer (and could have trees within it) and as already stated that area is owned by the adjoining Estate and does not fall within the developer's blue line. Therefore, suspensive conditions cannot be implemented and a Section 75 Agreement cannot be fulfilled.

Comment : Matters relating to visibility and junction improvements were discussed at the Hearing but the applicant has confirmed categorically that he has full control of the sightlines specified by Transport Scotland in their response dated 25th August 2011 (refer to supporting information below). In terms of junction improvements, it would be expected that prior to any development, a new junction shall be constructed to comply with Layout 3, irrespective of the phasing of the mixed development and contrary to the applicants comments of 27th October 2011.

3.0 Further Supporting Information from Applicant

An email from the applicant with photographs attached was received on 15th November 2011. *This information is intended to illustrate that an island in the River Fyne is below high tide level and therefore part of the foreshore of Loch Fyne. The applicant confirms that as owner of all of the land on the west bank of the river and estuary, he is in a position to satisfy the conditions requested by Transport Scotland in respect of visibility splays where the ownership of the river and foreshore near the bridge has no bearing on the visibility splays.*

Comment : The applicant has confirmed that he has ownership of all required visibility splays and can provide the necessary sightlines on a very fast section of the trunk road within . While a Section 75 Agreement would normally be the method to secure visibility splays outwith the red line boundary, the applicant's ability to control all of the land within the specifies sightlines could therefore be dealt with via suspensive condition if minded to approve.

4.0 Conclusion

Whilst the content of these letters does not alter the department's recommendation, the planning related views made by the objectors and applicant are material considerations in a determination of the proposal.

5.0 RECOMMENDATION

It is recommended that Members note the content of this supplementary report and planning permission be refused as per the original planning report dated 14th September 2011 and

amendments to reason for refusal no. 3 contained in Supplementary Report dated 20th September 2011.

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22nd November 2011