

**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**

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**Reference No:** 11/02449/PP

**Planning Hierarchy:** Local Development

**Applicant:** Mr Phillip Jones

**Proposal:** Removal of Section 75 Agreement Relative to Planning Permission 01/00800/DET

**Site Address:** Shore Cottage, Bendoran Boatyard, Buessan, Isle of Mull

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**DECISION ROUTE**

**(i) Local Government Scotland Act 1973**

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**(A) DETAILS OF APPLICATION:**

This application seeks permission to remove a Section 75 Agreement, (reference Sec75/404 ED/JTM) attached to planning permission 01/00800/DET which prevents the dwellinghouse known as Shore Cottage being sold off separately from the associated Bendoran Boat Yard/Lobster Farm and Shellfish Holding area.

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**(B) BACKGROUND**

Planning permission reference 96/01257/DET for erection of a dwellinghouse at the site was approved by Members on 5 March 1997 subject to a Section 75 Agreement preventing it being sold separately from Bendoran Boatyard. This application was subsequently refused on 25 November 1997 following the failure of the applicant to satisfactorily complete the Section 75 Agreement within the required four month period.

A further application, reference 98/00359/DET, was submitted for erection of the dwellinghouse, albeit in a different location to that originally proposed, again subject to a Section 75 Agreement preventing it being sold separately from Bendoran Boatyard/Lobster Farm and Shellfish Holding area. Again, due to the Section 75 Agreement not having been signed within four months, permission was refused on 2 February 1999.

The dwellinghouse was subsequently built on site without benefit of planning permission and was subject of an enforcement investigation by this Service. As a result of the enforcement proceedings, the Section 75 Agreement was signed on 11 May 2001 and a retrospective application for planning permission, reference 01/00800/DET, granted on 13 July 2001 for erection of the dwellinghouse. Despite having been the subject of a retrospective planning permission, it was not considered there was anything unusual in the timing, in that effective control over the development was by means of the Section 75 Agreement.

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**(C) REQUEST FOR REMOVAL OF AGREEMENT:**

This application seeks permission to remove the Section 75 Agreement which prevents the dwellinghouse known as Shore Cottage being sold off separately from the associated boatyard/lobster farm and shellfish holding plant.

In support of the proposal to remove the agreement, the applicant has advised that he purchased the premises in 2004 and that the business ceased operating on this site in 2006. The applicant has since obtained planning permission reference, 08/00129/DET, on 22 May 2008 for demolition of the existing shed and erection of three detached dwellings as a re-development of the site. A demolition warrant reference 08/00902/DEM was granted on 28 October 2008 for demolition of the shed, works on which the applicant has intimated are to start in the near future.

This effectively leaves the dwellinghouse, Shore Cottage, to which the Section 75 Agreement relates, without an ongoing associated business.

However, whilst planning permission has been granted to re-develop the site for residential use, should the Section 75 Agreement be removed and Shore Cottage sold without the new owner having control over the remaining land, there would be a possibility that the land could be sold by the current owner to another individual, who could then legitimately resume the authorised business use at the site should he/she so wish

Accordingly, in order to ensure that there is no potential for future conflict between residential amenity and the residual possibility that the business use might be resumed at some point (conflict which the Section 75 agreement was specifically intended to forestall), it is considered appropriate to replace the existing Section 75 Agreement with an alternative which extinguishes the use of the remaining land for its otherwise authorised business use.

Without such an alternative approach being in place and guaranteed by way of legal agreement enforceable against successors in title, it would merely be assumed that the business use had permanently ceased in favour of prospective residential development, but there would be no guarantee that this would be the case, even though it is the owners current intention and the most likely outcome.

This option has been discussed with the applicant, who has confirmed that he would be willing to enter into such an amended agreement extinguishing the business use in anticipation of the implementation of the residential permission for the site.

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**(D) RECOMMENDATION:**

In light of the above, it is recommend that the applicant enter into an amended Section 75 Agreement extinguishing the use of the the remaining land for its authorised business use, in favour of the residential permission previously granted for the redevelopment of land at Bendoran Boatyard/Lobster Farm and Shellfish holding, Bunessan, Isle of Mull, subject to the applicant meeting the Council's legal costs in so doing.

**Author of Report:** Fiona Scott      **Date:** 24/01/12

**Reviewing Officer:** Richard Kerr      **Date:** 01/02/12

**Angus Gilmour**  
**Head of Planning and Regulatory Services**