

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: 12/00094/PP

Planning Hierarchy: Local Application

Applicant: Osborne Interiors

Proposal: Refurbishment of existing bandstand.

Site Address: Kidston Park, Rhu Road Lower, Helensburgh

SUPPLEMENTARY REPORT NO.1

1.0 SUMMARY

Members agreed to continue consideration of this application in order to obtain clarity on maintenance of the bandstand and to receive further advice on the sustainability of the building materials and sustainability of the site. Set out below is additional information from the applicant together with possible options regarding on-going maintenance of the proposed bandstand.

2.0 FURTHER INFORMATION RECEIVED FROM APPLICANT

The applicant has provided a supplementary report detailing the issues required by Members which are summarised below:

2.1 MAINTENANCE

The applicant will maintain the bandstand for a period of 10 years from the completion date and would look to the community to set up a trust to continue maintenance after this period.

2.2 SUSTAINABILITY OF PROPOSED MATERIALS

The main construction of the bandstand edifice is spheroidal graphite (SG) iron with other sections made of galvanised and powder coated fabricated steel. SG iron is ductile and vandal resistant. Galvanising and powder coating of steel is a recognised long life, low maintenance building material.

The copula roof structure is constructed from sixty year old teak planks recovered from Hermitage Academy. The copula covering will be finished in zinc with a suggested life span in excess of 80 years.

The paintwork will consist of two pack primers and two pack finishes all available in normal RAL colours. Additionally, portions of the cast iron columns set in the ground will be treated with bituminous paint for below ground protection.

The existing stone base will be required to be re-pointed and the columns supporting the existing steel railings taken down and re-built using lime based mortar, when the new panels are introduced.

3.0 ASSESSMENT

As indicated above, the applicant has stated that they will maintain the bandstand for a period of 10 years from the completion date and would look to the community to set up a trust to continue maintenance after this period.

A key issue is how to secure maintenance of the bandstand. To this end Legal Services have been consulted and asked to comment on whether the Council could require the applicant's to enter into a s75 planning obligation which would place an obligation upon the applicant to maintain the bandstand for the ten year period and require a Community Trust to be established prior to the commencement of development on the bandstand which would assume responsibility for the maintenance of the bandstand upon the expiry of the 10 year period. Legal Services have also been asked to suggest what other options were available/reasonable.

1 - POSSIBLE SECTION 75 AGREEMENT

The proposal for a bandstand arose from a separate application for the erection of 3 dwellinghouses at land adjacent to 19 to 37 Cumberland Avenue, Helensburgh approved under reference 11/00887/PP. The bandstand was seen as mitigation for the loss of the Open Space Protection Area (OSPA) and was tied to this application by means of a Section 75 Agreement.

The first possible option is to set up a new Section 75 Agreement to cover maintenance of the bandstand as part of approval of the application. This is the applicants favoured option although this was only in relation to the 10 year maintenance period and they made no mention of the proposed Community Trust in their suggestion of a section 75 planning obligation. The legal department are of the view that it would be unreasonable/unachievable in terms of existing Planning Law and Guidance to require the applicants to enter into a planning obligation with the Council which required a Community Trust to be formed prior to the commencement of development on the bandstand and which will take on all maintenance obligations of the bandstand after ten years. On unreasonableness, there appears to be nothing in existing planning policies which is supportive of such a proposal. On achievability, there is no guarantee that such a trust can be set up or that it will not disband prior to or after year 11- it could in fact be disband 6 months after it is set up. Accordingly, an agreement reliant upon an as yet constituted Community Trust would not provide a reliable means of securing long-term maintenance.

2 - SECTION 69 AGREEMENT

A second option would be to require the applicants to enter into an agreement with the Council under Section 69 of the Local Government (Scotland) Act 1973 which empowers local authorities to enter into agreements, which assists them in undertaking their statutory functions including the restricting and regulating the use of land and buildings. However, it is mostly applied in situations where a one-off financial contribution requires to be paid to the Council by the applicant in terms of the Council's planning policy. Legal have advised that the Council could consider asking the applicant for a one off financial payment to accord with the anticipated cost of maintenance of the bandstand for the ten year period proposed by the applicant. Such a financial sum will be paid in full to the Council by the applicants prior to the commencement of development upon the bandstand. The Council would require to maintain the bandstand from the date of

completion of construction. Members should note that Sections 69 Agreements require to specify the way in which the Council will use the financial contribution paid by the applicant and that provision is contained within the Agreement which specifies that if the financial contribution is not utilised by the Council with a specified timescale (in this instance 10 years) that any unspent part of the contribution shall be repaid to the applicants.

This form of agreement does not require to be registered/recorded against title to land, and is not binding on successive proprietors given that it relates to an initial one off payment. Planning circular 1/2010 provides that agreements of this sort should be used to secure a financial contribution where successive proprietors do not require to be bound. This is the procedure that the Council tend to utilise to secure financial contributions towards the maintenance costs of play equipment provided to us by developers.

This single payment option obviously has financial implications for the Council and the applicant which would need to be agreeable to both parties.

3 - COUNCIL RESPONSIBILITY FOR MAINTENANCE COMMENCING AFTER 10 YEARS

A third option would be for the Council to enter into a s75 Planning Obligation with the applicants which places an obligation upon the applicants to maintain the bandstand for 10 years, on the understanding that it would be for the Council, through Streetscene, to maintain the bandstand from year 11 in the event that a Community Trust has not been established in the interim. The Streetscene service maintains the environment for communities and visitors. This includes street sweeping, grass cutting, grounds maintenance, prevention of littering and dog fouling, abandoned vehicles and car parking enforcement.

Streetscene have advised that while the materials look like they will last for 30 or 40 years without significant maintenance, it has to be borne in mind that there is always the prospect of an unforeseen event such as vandalism which could incur significant cost. There would of course be Council insurance in place in respect of such events subject to the usual policy excesses. This option would provide the most certainty in terms of long-term maintenance of the bandstand. We would also seek that the applicant's maintenance schedule for the first 10 years is agreed in writing with the Council to ensure measures are appropriate as part of the s75 agreement.

4.0 RECOMMENDATION

It is recommended that the application be approved subject to recommended conditions 1 to 3 as set out in the original report and subject to the conclusion of a Section 75 legal agreement to provide that the applicants are responsible for the maintenance of the bandstand for an initial period of ten years and the Council would be responsible for the on-going maintenance of the bandstand beyond year ten.

In the event that this application is granted the strategic management and resource allocation (post year 10) shall need to be considered by the Area Committee and Full Council before Council commitment is given to the project as a landowner.

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