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Argyll and Bute Council
Comhairle Earra Gháidheal agus Bhóid

Executive Director: Douglas Hendry



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31 January 2022

NOTICE OF MEETING

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held **BY MS TEAMS** on **MONDAY, 7 FEBRUARY 2022 at 2:00 PM**, which you are requested to attend.

Douglas Hendry
Executive Director

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST**
3. **CONSIDER NOTICE OF REVIEW REQUEST: SOROBA LODGE, OBAN PA34 4SB**
 - (a) Further information received from Planning Officer (Pages 3 - 6)
 - (b) Comments received from Interested Parties (Pages 7 - 12)

Argyll and Bute Local Review Body

Councillor Audrey Forrest
Councillor Alastair Redman

Councillor David Kinniburgh (Chair)

Contact: Hazel MacInnes Tel: 01546 604269

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REQUEST FOR ADDITIONAL INFORMATION

IN RESPECT OF

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

21/0005/LRB

**REFUSAL OF PLANNING PERMISSION FOR ERECTION
OF LAND TO FORM YARD FOR ERECTION OF TWO
HOLIDAY UNITS AND THE INSTALLATION OF A SEPTIC
TANK – PLANNING APPLICATION REFERENCE
20/01542/PP**

GARDEN GROUND OF SOROBA LODGE, OBAN.

22.12.2021

At the first calling of the above Review, Members have requested additional information and clarification from planning officers. The following is our response to the matters raised:

- Clarification on whether there could be a planning condition attached to an approval that required completion of a construction method statement and if this could include a weight restriction on vehicles using the bridge during the construction period.

Comment: Officers maintain their opinion that any such planning condition would fail the necessary legal tests for the use of planning conditions. The reasons for this are:

- (i) *As stated in our report of handling and reiterated in our statement of case, the applicant has failed to provide the information necessary in the interests of highway safety to enable a competent assessment of the existing access to be made; specifically the lack of the required structural survey of the existing bridge or the requested Safety Audit/Risk Assessment/Traffic Management Plan. Without that necessary information it would be difficult (if not impossible) to correctly and precisely frame the terms of any such planning condition;*
 - (ii) *Notwithstanding the above, the developer for the current Review does not own or control any part of the private access road. Additionally, the Appellant in this case (through their Agent) has specifically and consistently stated their unwillingness to provide any of the necessary information as required by the Council as Roads Authority or to carry out any improvements to the existing private access, regardless of any such planning condition. Any such planning condition would, therefore, likely be unenforceable.*
- A view in relation to the two pods being used instead of the two rooms in the house as B&B; and whether there could be a Condition or Section 75 Agreement put in place to manage that.

Comment: Again, as stated in our report of handling and reiterated in our statement of case, it is the opinion of officers that any such action would fall outwith the scope of planning control and, therefore, would not be legally competent. The reason for this is because the use of up to two bedrooms within the existing dwellinghouse (a dwellinghouse of this size) to provide incidental bed and breakfast accommodation specifically and unequivocally does not amount to 'development'. It is not considered to be within the gift of the planning authority to seek to interfere with matters that do not constitute 'development'.

The Review Body may wish to note that the same matter has been raised in connection with a current planning application for a different development elsewhere. The question has recently been escalated by the Council's solicitors (who have no immediate opinion contrary to that expressed by planning officers) to external legal advisors. That external legal opinion is currently awaited and the Review Body may wish to consider a further continuation of this Review until that external legal opinion has been expressed. However, Members are asked to consider also our response to the paragraph below:

- Clarification on the reasoning for the view that the development would result in intensification of use of the access; and if this was due to the fact that the bedrooms could still be used by friends and family members even if there was a condition in place that prevented their use as a B&B.

Comment: The development, on an area of currently undeveloped ground, of two new and additional residential holiday letting units must, by any reasonable definition, amount to an intensification of development within that area. The question here is whether the impact of

that additional development (in this case the impact of the proposed development on the condition and safety of the private access regime and those users of it) can be 'off-set' through either the commensurate physical removal of an existing and lawful development elsewhere within the same local area, or the commensurate cessation of use of, or commensurate attenuation of use of, an existing and lawful development elsewhere within the same local area.

There has been no offer to physically remove any existing development, i.e. the existing dwellinghouse, Soroba Lodge or any commensurate part of it. That leaves us with the suggestion that the developer can, somehow, restrict the lawful use of the dwellinghouse in order to permanently reduce its maximum level of occupancy by an amount commensurate with the occupancy of the two new residential holiday letting units proposed.

The opinion of officers is, and remains, that this cannot be achieved.

If one accepts the argument that the use of the dwellinghouse cannot be attenuated in the manner suggested by the appellant (because to do so would be to interfere with something that does not amount to 'development' in the first place) then there can be no other conclusion than the development of an area of residential curtilage to provide two additional residential holiday letting units must be an intensification of the existing use. Any intensification of the existing use of the site must, therefore, result in a corresponding intensification of vehicles using the access that serves the property. The use of the two residential holiday units the subject of this Review will attract additional vehicular traffic and that additional vehicular traffic will add an increased burden upon a substandard private access regime, contrary to the interests of highway safety.

Even if one accepts that the legal right to use the two bedrooms within the main dwellinghouse as incidental bed and breakfast accommodation could be curtailed by means of planning condition, or voluntarily relinquished through Legal Agreement, this would not, in the opinion of planning officers, result in any necessary and commensurate attenuation of the increased vehicular use of the site. This is because the maximum intensity of use of the dwellinghouse is limited only by its physical size - Even if one could construct a suitably robust mechanism to ensure that the dwellinghouse does not offer limited B&B accommodation within it, this would not prevent those same bedrooms being occupied by other members of a single household or by visiting friends and family members. The size of any one single household (living together as a family, plus guests) occupying a dwellinghouse is limited only by the physical size of the building. There is no feasible mechanism in play here to limit the physical size of the building.

Similarly, and as unlikely as it may sound, officers can conceive of no competent mechanism that would prevent existing rooms within the dwellinghouse being redesignated into bedrooms, nor could it prevent the subdivision of existing rooms in order to increase the 'occupancy capacity' of the dwellinghouse.

It is the opinion of officers that any such condition imposed, or Agreement entered into, would irrevocably collapse under even the most rudimentary challenge, either by the current owners of the property or by some future owner.

It is further considered that the enforceability of any such condition or Agreement would be so impractical as to be, for all intents and purposes, impossible.

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**Response to Planning Authority submission of additional information relative to
Notice of Review 21/0005/LRB
Argyll and Bute Council – Local Review Body**

Appellant: Michael & Rowan Acey

Project Ref: 2020034

Development: Refusal of planning application 20/01542/PP:
Erection of 2 holiday pods and installation of septic tank

Site: Grounds of Soroba Lodge, Oban, PA34 4SB

Scale: Local development

Response

Thank you for the opportunity to respond to the Planning Authority's provision of additional information submitted on 05/01/22 relative to Notice of Review 21/0005/LRB.

The Local Review Body sought information from the Planning Authority on three specific points, within a framework of exploring options for a competent motion:

- 1) The use of a planning condition covering a construction method statement.
- 2) The use of a planning condition or Section 75 Agreement covering overall B&B activity within the site.
- 3) Clarification of the nature of planner's concerns around intensification of use in the event that B&B activity was limited.

Planning officers have defended their initial negative assessment rather than just responding to the information requests as presented. That is perhaps understandable due to the inherent nature of the LRB process, but in so doing, they have lost some objectivity and overlooked alternative perfectly legitimate outcomes which could be applied without difficulty.

1) Construction method statement

Construction Method Statements (CMS) commonly feature in planning conditions to regulate how a development is implemented.

Compliance with a CMS, or enforcement of any associated planning condition, is not dependent on an applicant owning the entire access regime, nor even part of it, because the condition relates to behaviours and appropriate enforcement action in the event of a breach would be to stop the development.

We have declined to offer upgrades to the existing private access within the project (because no intensification of use of the access would arise from the development), but we have also consistently volunteered from the outset to provide and adhere to a CMS relating to construction traffic.

For small-scale developments, there is no need to provide a full risk assessment/safety audit/traffic management plan upfront and all previous Council requests for these documents were to secure an upgrade to the existing access regime. To demand that of the applicants in this case would be disproportionate to the scale of the project that is being advanced. The single storey timber frame pods can literally be built on site utilising the 3.5T van already owned by the applicant (which uses the access on a daily basis), plus a small trailer to enable a 2T excavator to be brought to and from site to complete the initial ground works. No abnormal loads or heavy goods vehicle activity would be generated.

Considering that the shared access serves multiple properties requiring oil fuel deliveries bin lorry access, parcel deliveries etc on a regular basis, any impacts arising from the construction of these two small pods would be minimal. A CMS should proportionately cover facets of construction activity such as vehicle weight, vehicle size or vehicle movements, or the timing of deliveries/movements to and from the site. The project will be self-built - directly managed by the applicant on a day-to-day basis.

CMS are a perfectly acceptable and legitimate method by which to control the impact of construction phases. They are commonly used by planning authorities, including Argyll and Bute Council, and there is no reason why one could not be used in this instance.

An example planning condition could read:

No development shall commence or is hereby authorised until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Planning Authority. The CMS shall include a full description of material delivery methods, construction vehicle size, vehicle numbers and vehicle weights proposed for use during construction phases, as well as defined hours during which all construction vehicle movements will be confined having regard to the nearby primary school campus term time opening hours. Thereafter, the development shall only be undertaken in strict accordance with such details as are approved.

Reason – in the interests of road and pedestrian safety.

2) Control of overall B&B activity

Planning conditions have already been used by the Planning Authority to control the total level of guest accommodation provided within multi-building house sites, such as in the Taynuilt example highlighted in our Notice of Review.

Planning conditions are also regularly used to cover matters that are normally not subject to planning control – such as by limiting or removing permitted development rights or narrowing down the specific activity within a use class that may occur on individual sites, and so on.

Planning conditions can legitimately be used in this instance, to ensure that the level of guest accommodation at the site does not exceed two double bedrooms in total and in so doing, guarantee that there is no intensification of use of the access arising from the development beyond that which already occurs.

An example planning condition could read:

Notwithstanding the provisions of Class 9 of the Use Classes (Scotland) Order as amended, from the date of the first occupation of either holiday pod hereby approved there shall be no bed and breakfast accommodation within the existing house whatsoever - unless first otherwise agreed in writing by the Planning Authority.

Reason – to ensure that vehicle numbers do not increase from their existing levels, in the interests of road safety.

Alternatively, the planning condition could be worded to limit the total number of guest bedrooms within the site to a maximum of two and still achieve the same purpose.

Section 75 Agreements offer an alternative method of control.

The heads of terms for an Agreement in this case would be to remove the right to undertake B&B activity within the house as provided under Class 9 of the Use Classes (Scotland) Order as amended, in conjunction with planning permission being granted for the two pods within the garden ground as applied for under application 20/01542/PP.

The appellants remain willing to enter into a Section 75 Agreement if one is deemed necessary, but we consider a planning condition, like the example condition shown above, to represent a simpler, more practical and appropriate option in this instance.

3) Concerns regarding total bedroom usage

We understand that the planner's concern regarding intensification is indeed as the Local Review Body has suggested i.e. that the five bedrooms within the house could still be used by friends and family in addition to the two pods being used by guests within the garden grounds.

The planning unit currently comprises a five-bedroom house, including two B&B double bedrooms, plus residential curtilage.

If allowed, the development would create a planning unit with seven bedrooms in total, two of which would provide holiday accommodation.

Going from a five-bedroom house to a seven-bedroom house would necessitate no additional parking under SG LDP TRAN 6, and either size of house could accommodate up to two bedrooms for B&B purposes under Class 9 of the Use Classes Order in normal circumstances.

Within that context, we assert that changing from a five-bedroom house with two serving as B&B to a five-bedroom house plus two pods for holiday accommodation would have a negligible impact on vehicle numbers.

The likelihood of all bedrooms in the house being fully occupied by friends and family would be so rare as to not require Planning Authority control – as evidenced by the lack of general requirement to continually add parking spaces as and when larger houses are extended under the local development plan (SG LDP TRAN 6).

We re-assert that if we had sought to extend the existing house by adding two bedrooms (to create a seven-bedroom house in the process), the issue of road safety would never even have arisen.

Summary

There are paths to a resolution in this case that allow the development to proceed whilst also safeguarding the shared access regime.

The 2007 precedent decision on the Elderslie site (07/01798/COU) could itself legitimately form the basis of a competent motion to grant planning permission – because the council concluded then that a development generating a larger increase in traffic than would occur with our proposal did not comprise an intensification of use of the access.

It would also be entirely competent for the Local Review Body to grant planning permission with planning conditions covering B&B activity within the site to demonstrate that there was categorically no increase in traffic and therefore no impact on the existing access regime, and to secure a Construction Method Statement ensuring that construction is undertaken appropriately.

The Local Review Body is asked to support this Notice of Review and enable a small positive contribution towards tourist accommodation to be provided in a way that accords with local and national planning policy and raises no unacceptable impacts.



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Stephen Fair MRTPI MURP

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11 January 2022