



6 February 2020

Fiona McCallum
Committee Services Officer
Legal & Regulatory Support
Argyll and Bute Council
Kilmory
Lochgilphead
Argyll
PA31 8RT

Ref MHP: 2019_0105

Dear Fiona

NOTICE OF REVIEW REFERENCE 20/0001/LRB (PLANNING REF: 19/01737/PP - LAND NORTH OF PENMORE MILL, PENMORE, DERVAIG, ISLE OF MULL

Further to your e-mail of 24 January 2020 in respect of the above I can respond as follows.

In the first instance the fact that it has been fully acknowledged that two previous planning permissions to erect a dwelling on the review site were "granted in error" is welcomed. Officers have said in their response to the application for review:

"Comment: At the time of granting planning permission 08/00438/OUT, planning policy was at a transitional period between the Mull, Coll and Tiree Local Plan 1st Review & Alteration & Monitoring Report (adopted 9th June 1988) and the Argyll and Bute Modified Finalised Draft Local Plan. It would appear that planning permission was granted in error as the site would not have been within the ROA and it would have been contrary to the Argyll and Bute Modified Finalised Draft Local Plan. The subsequent planning application 10/01597/PP would also appear to have been granted in error as the site was not with the ROA as per the Adopted Argyll and Bute Local Development Plan 2009."

In order to seek to dismiss the importance of these two erroneous decisions officers have however then said that "none of the officers involved in either of the previous planning approvals granted on this site remain employed by the Council". This is not true. Whilst the officer who dealt with application reference 08/00438/OUT (Ewen Stewart) is no longer employed by the Council, the officer who dealt with application reference 10/01597/PP (Lesley Cuthbertson) is still an employee of the Council.

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Furthermore, these were not the decisions of individual officers, these were the decisions of Argyll and Bute Council, issued on behalf of the Council by the former Head of Planning and Regulatory Services, Mr Angus Gilmour.

Planning permission reference 10/01597/PP was granted on 24 December 2010. Following this, in April 2012, an application for a Building Warrant was submitted. This was approved in November 2012 (LPA reference 12/00453/ERD). Some months prior to this preparatory works commenced on site. In June 2012 the access track was formed, and in July 2012 the base for the shed was laid.

Unfortunately, in late 2012, the applicants had to return to New Zealand to care for Mr Tiernan's mother. The development of the site at Penmore was therefore put 'on hold' until they were able to return to Scotland.

Below is a summary of costs that have been invested in the site by the applicants following the original grant(s) of planning permission:

Planning Application	£469.00
Site Survey	£768.00
Site Investigation Report	£747.50
Architect Fees	£10,000.00
Structural Engineering	£3,230.88
Drainage Report	£542.29
SAP Calculation Report	£267.60
Building Warrant Application	£650.00 approx
TOTAL	£16,675.27

All of this has been invested in the review site on the basis of what officers are now admitting were fundamental errors that were made by the Council in 2008, and again in 2010.

Officers, in seeking to defend the recent refusal of planning permission, have merely said with respect to this:

“Notwithstanding this, the planning authority are not persuaded that these decisions (which are approximately a decade old) should be afforded substantial material weight in the consideration of the current application.”

This is considered by the applicants to be both unacceptable and unreasonable. As has previously been explained, the review site, although this was never within the Rural Opportunity Area, was one which was specifically promoted by the Council's appointed planning officer in 2008. It now transpires that the officer in question promoted this site in error. On the basis of this acknowledged error the applicants have nevertheless spent over £16,000 in order to implement the planning permission that the Council had previously granted.

Whilst it is accepted that every planning application must be determined on its individual merits, having regard to the provisions of the development plan and other material considerations, it is also vitally important for the credibility of the planning process that decision makers are consistent in their approach. It is also a well-established legal principle that previous planning decisions are capable of being a significant material consideration, meaning that they need to be taken fully into account by those determining subsequent applications for planning permission (see attached document "The Importance of Consistency in Planning Decisions").

The reasoning behind this was explained by Mann LJ in the case of North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137 when he said:

"One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system".

At present the applicants understandably have little confidence in the planning system. The fact that they have had to seek this review in respect of a site where planning permission for the erection of a dwelling has been granted twice, and a building warrant once, they find extremely difficult to understand, or to explain to other people in the local community. The application and review process have furthermore placed a huge amount of stress on Mr Tiernan's personal relationships with his wife, family and friends. As set out above, the financial implications of now having been refused planning permission are also significant.

How much weight should be attached to a relevant material planning consideration, such as the planning history of a site, is wholly within the gift of the decision maker, in this instance the members of the Council's Local Review Body. It is therefore sincerely hoped that enough weight will be able to be attached to the planning history of this particular site, given the acknowledgement of the errors that the Council made in 2008 and 2010, and that on this basis a further planning permission for the erection of a dwellinghouse, outbuilding and installation of septic tank on the site will be able to be approved.

Yours sincerely

A black rectangular redaction box covering the signature of Michael Hyde.

Michael Hyde MRTPI
MH Planning Associates