

MINUTE

A&B - Public

Planning Committee
Council Chamber, Town Hall, Lerwick
Tuesday 15 September 2015 at 2pm

Present:

F Robertson	P Campbell
S Coutts	B Fox
D Ratter	D Sandison

Apologies:

M Bell
A Manson
G Robinson

In Attendance (Officers):

I McDiarmid, Executive Manager – Planning
A Taylor, Team Leader - Development Plans and Heritage
R MacNeill, Planning Officer
C Gair, Traffic Engineer
P Sutherland, Solicitor
L Gair, Committee Officer

Chair

Mr F Robertson, Chair of the Planning Committee, presided.

Circular

The circular calling the meeting was held as read.

Declarations of Interest

None

11/15

Minutes

The Committee confirmed the minutes of the meeting held on 14 April 2015 on the motion of Mr Campbell, seconded by Mr Fox.

Local Review under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) to be considered by the Planning Committee sitting as Local Review Body:

The Chair advised that the item on the agenda is to be determined by the Planning Committee sitting as the Local Review Body. He explained that under the Modernisation of the Planning Act 2006, the right of appeal to Scottish Ministers was withdrawn, and in its place arrangements were made for Local Authorities to have their Planning Committee sitting as the Local Review Body to consider appeals against decisions made by the appointed officer, who had delegated authority to determine the decision of a particular application.

The Chair explained that the Planning Committee has full authority to carry out the duties of the Local Review Board. He advised that the process takes the form of a quasi-judicial hearing, where the objectors, and then the applicant/applicant's agent are invited to address the meeting. Members then consider the evidence presented and come to a determination of the decision taken by the officer who has been dealing with the case. The Chair advised that the decision of the Review Body is full and final, and the appellant has no other recourse other than to go to the Sheriff Courts on

matters of procedure of the Review Body. The Chair concluded by advising that the officer dealing with the application will first give a brief presentation to the Review Board, and Members have been supplied with all the details of the case so are fully informed.

12/15 **2015/056/PPP – LR21 – To erect dwellinghouse (Planning Permission in Principle): Croft, 12 Veensgarth, Gott, Tingwall, Shetland ZE2 9SB**

The Committee considered a report by the Planning Officer – Development Management [RECORD Appendix 1].

The Planning Officer (R MacNeill) presented a location plan as part of his presentation and advised the Committee that “in 2009 two applications were made for planning permission to erect two dwelling houses on land at 13 Veensgarth, the public road over which access to the proposed houses were intended, had severely restricted visibility. As such the applications did not then proceed to determination.

An application to improve this section of public road was submitted and in May 2011 planning permission was granted by the Planning Committee to form a new section of public road which runs past and through land at No. 1 Veensgarth (2010/425/PCD).

Subsequent to that planning permission being granted the planning applications for the erection of the two dwelling houses (2009/139/PCO and 2009/61/PCO) at 13 Veensgarth were granted, again by the Planning Committee, both being subject to a condition that no development on any dwelling house should commence until such time as the works to form the new section of road had been carried out.

Planning Permission in principle for the erection of a dwelling house was granted on 9 June 2015 and a condition (No. 6) reflecting the history outlined above, the Road Service having commented that in line with the previous applications a suspensive condition should be placed on any consent issued that suitable road improvement in line with those consented previously (under application 2010/425/PCD) are provided and brought into public use before any works start on site. This appeal relates to the imposition of Condition 6.

The capacity of the road to carry traffic safely is evidently close to a tipping point if, notwithstanding the lapsing in the meantime of planning permission 2007/94/PCD, the Roads Service recommended the imposition of a suspensive condition requiring that suitable road improvements in line with those consented under application 2010/245/PCD are provided and brought into use before any works start on site.

It is arguable that older consents which have now lapsed could make claim to any spare capacity on the road. This could occur however without need for specific planning consents through the exercise of permitted development rights, and also through changes in occupancy levels.

In conclusion, while it is considered that the principle of the erection of a dwelling house is acceptable and in line with other policies contained in the current development plan, the proposal failed the test in terms of a safe and convenient access as required by policy TRANS 3 and the suspensive planning condition was a sound planning judgement.”

The Chair asked for clarification on the original three sites under one application in 2007 and two in 2009, and whether these applications had now lapsed. The Planning Officer confirmed that these had lapsed as well as the planning permission in 2010 to improve the road and advised that the suspensive condition was still live. In response to a

question on process, the Team Leader – Development Plans and Heritage confirmed that the Committee could consider the application afresh and take into consideration other aspects of the application in the entirety of the application for planning permission. A Member noted that only the two applications in 2009 had condition 6 attached.

The Chair advised that there were four representations to be made, three of whom are objectors who wish to address the meeting. He advised that if the points were similar it would be appropriate for a spokesperson to provide this representation. Mrs Pole advised that on behalf of herself, her husband, and Mr and Mrs Sinclair, a statement had been prepared. At the request of Mrs Pole, the Chair on this occasion, agreed to allow a total of 10 minutes as these were objections from two separate households.

Mrs Pole, Objector, was invited to address the Review Body and read from a prepared statement to be provided after the meeting:

“Thank you for the opportunity to express our concerns. We feel that the following should be taken into consideration when you The Local Review Body reviews the planning application 2015/056/PPP and we ask that condition 6, being right and proper, should be upheld and we request that the application should be revoked for the following reasons.

The road is not fit for further traffic increase. We understand that for a new development of more than 8 houses there should be a double width road. Once you pass Veensgarth house there are 9 existing houses plus Crofts 10 through to 15 with their associated farm vehicles all served by a tarred narrow farm road (2.5m) with no hard shoulders with only a narrow grassy verge (circa 0.5m) hardly wide enough for a push chair. The dangers were pointed out by the previous councillors who visited and saw firsthand the dangerous blind corners. Relying on mirrors is not safe, particularly with rain or in the dark and will make the corners more dangerous for pedestrians, children in particular. The school bus was removed due to cuts so children will have to negotiate the three blind corners in the dark and rainy days. Since 2007 there has been considerable increase of traffic as stated in previous correspondence, including three new businesses (see the list on page 71 of the review document) there should be no more houses as the associated increase in traffic will add to the danger. The decision of Councillors at the time stated that “no work should commence on any dwelling until the road is completed and in public use” they made that decision on the situation as it was presented to them at that time, not with the consideration that there was a live application in place with a hypothetical traffic allocation that can be transferred as suggested by the appellant. As far as we are concerned that decision should stand.

Road drainage with respect to the access road is another issue that is the result of poor planning enforcement. At the end of 2009 the access road was put in to serve the first of the houses on croft 13, it was done without planning permission and without a building warrant. We objected, our councillor had correspondence with the planning department stating that it was not up to the standard required for even the most basic farm track, it blocks the drainage of water coming off the hill and from Croft 12’s arable field resulting in standing water when it rains and the runoff overflows onto the road. It is funny to see one of the recommendations “Report of Handling” (page 34 number 6) being left out of the conditions in the consent under review today; this is the condition ignored when the first of the new houses on part of Croft 13 was built and this is the new access road with respect to this application. We still object to the road for two reasons: it results in part of the Croft to be neglected and the public road gets overrun with water.

The change from agricultural use to housing is not appropriate in a crofting area. The area was classed as Zone 4. There is no guarantee that the applicant will live in the house. To raise finance the site will be decrofted. This is detrimental to our and wider crofting interests. Now you may say in defence of the permission given that the Crofting Commission as Statutory Consultee chose to make no comment. However, a planning application for a house does not come under their remit, they can only comment if and when a decrofting application is submitted to them; usually after planning permission is granted. This situation renders the Crofting regulating body superfluous at best and a redundant bystander at worst. This scenario results in repeated decrofting causing asset stripping of the best land belonging to the Croft. The field that the plot is on is described as rough grazing, it is not; it is arable, when the previous tenant had the Croft this field was ploughed and produced a brassica crop. As the planning application does not go to the Crofting Commission before being submitted to the Planning Department the Crofting Commission is powerless to advise the Crofter to build on the poorer land. This is stupid and no way to ensure the Crofts viability.

The land is low lying with no mains sewer system. The last two houses on the sewer system is Veensgarth house and Croft 15, all the rest have septic tanks. The Supporting letter written by a property developer confirms that 12 new houses will be required to privately fund the new access road around number 1 Veensgarth. The three housing consents (mentioned in the property developers supporting letter) that are currently suspended are the first of many. Counting the two house sites on Croft 13 and adding the 5 or so similar size sites to the north and the west of the application site 2015/056/PPP, all on Croft 12, we are looking at a substantial development with a long row of septic tanks that in this day and age is unacceptable. We have no doubt the 12 house scenario will happen in due course and due to the individual nature of applications the whole development is done on the cheap with no one taking responsibility for a proper road or sewer system.

The Planning Department needs to plan properly to protect functioning croft businesses. Please see page 37, paragraph 6 of the Review document, is it not a disgrace that "The Local Development Plan 2014 does not contain policies which seek to protect agricultural land nor has it identified areas where housing will be explicitly excluded due to agricultural employment or need". This fly's in the face of the crofting laws, the Crofting Commission's latest leaflet states "Crofts are a valuable resource that should be available both now and in the future for existing Crofters and new entrants to crofting to use productively" and "A Croft can be put to another purposeful use.....but which will not prevent the croft from being used for cultivation in the future". Sterilisation by house building removes it from cultivatable use. If the planners have decided to change the use of land from agriculture to residential use without public consultation and without the agreement of the Crofting Commission then this is wrong. The land is zone 4 and the lack of consultation about changing agricultural land to an urban sprawl is not acceptable. If the local community want the crofts to be given over to housing then the planners must accept their responsibility to ensure proper infrastructure is put in place by the developers with respect to the overall development not on this drip, drip Ad Hoc basis. Also they should ensure that the community is consulted and allowed an opinion. This was done in the past with meetings held in the Tingwall hall, the Gaet-O-Gott houses were discussed and that land was changed from Zone 4.

In summary we think the roads department made the correct decision in advising that no further houses should be built and that the Planning Board was wrong to award planning permissions especially when they are immediately suspended due to the dangerous blind corners. Therefore we ask that the planning application condition 6 is upheld and the planning permission is revoked."

Mr Irvine, Objector was invited to address the Committee and read from a prepared statement to be provided after the meeting:

“What I would like to focus on in this short statement is road safety.

In 2010 the Roads Department decided to make a recommendation that no further houses be built in the Veensgarth Road until the new road layout, proposed by Mr Cecil Eunson and granted permission in 2010, was completed and in public use. This decision was arrived at subsequent to a meeting on location at the blind corners at No. 1 and No. 2 Veensgarth. Present at the meeting were representatives from the Roads and Planning Departments and two of the then ward Councillors being Iris Hawkins and Andrew Hughson. I am reminding you of this fact in case, through the passage of time, the recommendation from the Roads Department may now be viewed as an arbitrary decision, it was not. I would also suggest that any decision to decide against the 2010 recommendations of the Road's Department should only be made with the same thoroughness as the 2010 decision, that is subsequent to a location visit.

The Fact that the planning permission previously granted on Croft No. 10 Veensgarth has lapsed should be viewed as an improvement to the future road safety of the area simply because of the traffic associated with this house will not now come into existence. The idea that this traffic allocation may be transferable and made to justify arguments for another different application means that the improvement in road safety gained by number 10's planning permission lapsing will be lost, which seems illogical at best.

The suggested use, by the applicant, of more passing places and mirrors, to mitigate the accepted road safety issues, may indeed make passage through the blind corners quicker and more convenient for drivers but not necessarily safer for other road users. As this stands, it is my opinion, that the awkwardness of the road is the only thing that slows most of the traffic down to an acceptable speed. The safety of this stretch of road will simply not be improved by adding more traffic.

The vexatious issue of planning in Veensgarth road has been rattling on for more than 10 years with a great deal of upset for residents and applicants alike and additionally what must have been a huge amount of man hours from the local authority. We thought that the 2010 Roads Department recommendation gave a clear message to those involved, being no new houses until the new section of road is constructed and in use. If the result of this review is to allow Mr Morgan's application on the grounds of the spurious transfer of traffic allocation this would in my opinion be a bad enough mistake but would only be one house. However if it is allowed on the grounds of perceived improvements to the existing road then it will be open season with any applicant able to make the argument that if the road is now suitable to allow further building then this principle should also apply to them. I assure you that this situation will not be lost on those seeking to further break up the good arable land in Veensgarth for house sites.

I urge you to uphold the original decision based on the Road Department's 2010 recommendation or we are likely to have another ten years of girning.

Thank you for our time and the opportunity to state my point of view.”

In response to a question on the access track without planning permission mentioned by Mrs Pole, the Chair advised that the standard of that access was not for consideration under this application.

At the direction of the Chair Mr Morgan, applicant, addressed the Committee but had no prepared statement to provide:

Mr Morgan explained that he had owned the land for the last 10 years and the application was for one house on his land. In regard to the blind corners he said that could be worse but questioned what tipping point there was and what evidence there was to support that. He said that there was minor inconvenience but he had lived in the area since 1998 and just because they were blind did not make them dangerous. He said that there were no reported accidents and as blind as they may be the bends do serve as a calming measure. He said that other than “twitchers” the road was mainly used by people who know the road.

Mr Morgan referred to the lapsed planning permission in 2007 and the expected increased road traffic. He said that there was to be a small business in the form of a farm shop and that would have people coming in and out on the road. He said that he was suggesting one house that would increase the traffic but that would be less than previously accepted. Mr Morgan added that this would not be increased by a whole dwelling as he already used the road several times a day to access his land. Mr Morgan said that given previous examples he was asking for consistency and clarity.

In response to a question regarding the increase in traffic, Mr Morgan confirmed that his current house was located before the blind corners.

The Chair advised that he had been on site three times and was aware of the corners and accesses in that road. He said that the question was on how to deal with traffic that was using the road and at the time of the suspensive order the Committee need to consider a tipping point. The Chair asked the Traffic Engineer if there had been further assessments of traffic movements since the suspensive order in 2010/11.

The Traffic Engineer advised that an appraisal of the road was undertaken in 2009 for the application that was considered in 2010. This showed that there were around 60-110 vehicle movements per day depending on the day of the week. At that time there were three live applications. In terms of a tipping point, the Traffic Engineer explained that as traffic flow increases conflicts can grow almost exponentially, but that local traffic patterns can affect the level of conflicts. The Traffic Engineer commented that it is often the people using the road that are best placed to make a judgement on the level of conflict. He went on to say that the recorded traffic figures suggested a reasonable level of movements and given the standard of the road a reasonable degree of conflict, as described by local residents, could be expected, but there was no scope for the Road Service to do any further improvements and therefore a suspensive planning condition was sought. The Traffic Engineer confirmed that no further traffic counts had been carried out, but commented that there would be little benefit in doing so as traffic flows vary naturally over time and the issue here was more about the effect of any change resulting from additional development. He said that the bends were sub-standard and measures had been taken to minimise the effect. The Chair asked if it was the Traffic Engineers opinion that the bends were not up to standard, to which he responded that they would not be allowed on a new road. He also confirmed that local experience would suggest 7-10 movements per dwelling in this area, and that with 6 houses and farm holdings the volumes recorded in 2009 were commensurate with that.

A Member questioned whether refusing this application would set a precedent and stifle future house building in other areas where roads do not meet the standards. The Traffic Engineer advised that seeking to put a delay on building until improvement are made is a restriction that would only be placed in the most serious of situations and advised that

there had only been around four cases in the last fifteen years where a restriction was imposed.

In responding to a question as to whether the entire road would need to be upgraded should 12 properties be considered, the Traffic Engineer said that should there be demand for that level of housing in that location, the single track road could handle the increased traffic movements but it may require additional passing provisions. He said however that the previously consented road improvement would deal with the most of this but there would be no need for a whole-scale shift from a single track road to a double width one.

The Chair said that the suspensive order was dealing with the lack of visibility and road width through the bends and stated that the risks, when taken at speed, poor light and weather, would be increased with the addition of more cars.

Mr Fox said that he was acquainted with the road, and had driven along the road it this morning. He said that it was not a good road and he questioned whether, if the application was approved without road improvements and some mitigating measures were put in place, others would apply for planning permission on the same basis. He said that the objectors thought that twelve houses would come into the area, as a fait accompli, as there is a developer intent on developing the area. He said that the Committee cannot move away from the improvements required for the 2009 applications.

Mr Sandison agreed and said that he found it difficult to balance the issues but that the Committee had made decisions previously in 2010. From a planning position there should be infrastructure to support further development and this should be carried out in a planned way. From that point of view Mr Sandison said he would like to see the condition in place and encourage developers to come together to find a solution.

Mr Fox moved that the Committee approve the officer's recommendation that condition 6 remains. Mr Campbell seconded. There was no one otherwise minded.

Decision:

There being no one otherwise minded, the Chair confirmed the decision of the Local Review Body to uphold the decision made to **APPROVE** the planning permission for the development, subject to the specified conditions.

The meeting concluded at 2.45pm.

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Chair