

MINUTE

A&B - Public

Planning Committee
Council Chamber, Town Hall, Lerwick
Tuesday 15 March 2016 at 2pm

Present:

F Robertson	M Bell
S Coutts	P Campbell
A Manson	D Ratter

Apologies:

B Fox	G Robinson
D Sandison	

In Attendance (Officers):

N Grant, Director of Development Services
I McDiarmid, Executive Manager – Planning
J Riise, Executive Manager – Governance and Law
J Holden, Team Leader – Development Management
C Gair, Traffic and Road Safety Engineer
R MacNeill, Planning Officer
P Sutherland, Solicitor
C Anderson, Senior Communications Officer
L Adamson, Committee Officer

Also in Attendance

M Burgess
A Cooper
T Smith

Chair

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

Circular

The circular calling the meeting was held as read.

Declarations of Interest

None

05/16

Minutes

The Committee confirmed the minutes of the meeting held on 23 February 2016 on the motion of Mr Campbell, seconded by Mr Bell.

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 Planning Committee today was sitting as the Local Review Body (LRB). He explained that under the modernisation of the Planning Act 2006, certain powers were delegated to officers to assess and determine applications against Council Policies, where these Policies are enshrined in the Local Development Plan (LDP), and were approved by Scottish Ministers. In terms of the Planning Act 2006, when an applicant is aggrieved with

a decision of officers, the right of appeal to Scottish Ministers was removed and in its place appeals are handled locally through the LRB. The LRB has authority from the Scottish Government and this delegation was passed to Council, and delegated to the Planning Committee, and in view of their training Members are in a position to handle Local Reviews.

The Chair advised on the purpose of the Local Review to examine applications afresh but still to consider Council policies against that determination. He then advised on the process for a Local Review, which takes the form of a Hearing, where papers are tabled relating to the application and the handling of the application. The main representation being the Hearing Statement as submitted by the applicant, along with additional papers for consideration. The Officer who dealt with the case will present the findings and the handling of the application, and following that, the appellant and objector are invited to address the meeting, where the time allocation for such presentations is 5 minutes. He said that during the process, questions are encouraged from Members of the LRB as it is incumbent to get as much information on the application as is possible, and to set it against the Policies used to determine the application.

In regard to this particular application, the Chair referred to the number of representations made in good faith and generally supportive of the application, however he said that the LRB must look at such appeals from a planning consideration point of view, where he said that many of the representations made are viewpoints rather than material planning considerations. He stated that it is incumbent on Members to keep that in mind when looking at the merits of this case. The Chair then advised on the lobbying of Members of the Planning Committee/LRB in regard to this application, which he said is not illegal but in terms of the Councillors' Code of Conduct, Members of the LRB must not respond to any comments prior to meetings, which he was assured all Members were aware of.

The Chair concluded by advising that the decision of the LRB is full and final, where should the appellant be aggrieved, the only recourse is through the Sheriff Court in terms of process and procedures of handing and management.

The Chair invited the Planning Officer to introduce to the LRB the planning application as submitted and determined.

06/16 **2015/332/PPF – LR23: To construct a single storey detached restaurant/pizzeria; ancillary supporting accommodation and customer car parking: Parkgate, Brae, Shetland ZE2 9QS**

The Committee considered a report by the Team Leader – Development Management [RECORD Appendix 1] for a decision following a Local Review.

The Planning Officer gave a slide presentation, which illustrated the following:

- the relationship of the site to settlements of Brae and Voe
- the relationship to the neighbouring house
- site plan
- development elevations and floor plan
- recent photograph of the site, and
- key issues

The Planning Officer referred to the Shetland Local Development Plan (SLDP), which was drafted after much consultation and approved by the Scottish Government, and is the statutory document which has a key role to play in facilitating opportunities for sustainable economic growth in order to contribute to robust, thriving and diverse and

vibrant communities where as many people as possible are able to access services, employment and other opportunities. He said that the determining issues to be considered are whether this proposal complies with Development Plan Policy, or there are any other material considerations which would warrant the setting aside of Development Plan Policy. He said that the clear thrust of the Economic Development policies that the Development Plan contains direct proposals such as the one now under consideration to existing settlements. If proposals are made for developments which lie outwith settlements a clear and reasoned justification should be made. In this instance no such justification has been made and therefore there are no material considerations which would allow a recommendation for approval.

The Planning Officer said that encouraging this type of development to be sited within existing settlements has the intention of seeing that the vitality and vibrancy of those settlements is maintained and enhanced. The policies are therefore about promoting vitality and vibrancy of settlements such as the closest ones to this development, Brae and Voe. He said that businesses such as this would be an asset to either the Brae or Voe communities and therefore should be directed to such areas.

The Chair then invited the applicant to address the LRB.

Mr MacColl read from a prepared statement as follows, *"Good afternoon. I am not here to discuss carbon footprints or having to use your car to visit eateries on the island, I am here to resolve an issue with my planning application. I can understand how the planners made their decision based on the guidelines they have to work from.....however, in November last year, I went to North Ness to speak to a planning officer with regards to where my application was in their system prior to booking ferries and driving to Italy with my daughters to look at pasta dough machinery and clay ovens, only to be told..."it's a brilliant idea, but it's not going to happen" – the main reason for my refusal was primarily my location.*

Parkgate would be an ideal location for my pizzeria restaurant, simply because of the beautiful unrestricted views across Olna-Firth. As you may be aware, Douglas Henshall of the recent 'Shetland' drama series commented in Friday's Shetland Times that he would return to the island simply for the landscape and how peaceful Shetland is. Something you wouldn't get in a built up town. This is exactly what I am aiming towards, a serene backdrop, eating healthy, authentic food, in a family environment. My proposed site does not require any additional utilities, due to several existing dwellings nearby. Access to the premises from either North or South is very good, being it Shetland's primary road, the A970, which starts at Sumburgh and ends at North Roe. On a recent survey carried out two weeks ago, my daughters counted how many vehicles passed by the proposed site from North and South: Wednesday 2 March, from 4pm to 7pm, 625 vehicles passed; Thursday 3 March, 581; Friday 4 March, 626; Saturday 5 March, from 2pm to 7pm, 737; and, Sunday 6 March, from 12pm to 7pm, 1041 passed by, an average of 150 vehicles per hour.

On the basis of sustainability, the majority of wholesalers that I would use pass my front door en route to various existing hotels, restaurants and rural shops. These being Grays, Knowles, Shetland Dairies, Hughsons, Shetland Freezer Foods, Blueshell Mussels, Blydoit Fish are a few examples. I would be employing local personnel who are native to the island, and can relate to their own culture, conversing with customers and tourists alike.

Tesco in Lerwick are delivering goods all over the island, using multiple vans, mainly serving customers who do not hold a driving licence, pensioners and also those who

are not physically able. I see no reason why I can't provide a pizza delivery service to customers, even to the inter island ferry terminals, saving islanders the need to travel to the mainland Shetland.

One of the most important matters I believe has been totally overlooked here, is the fact that the Mediterranean diet is one of the healthiest in the world, having no sugar added to any of its main dishes, an issue that is constantly being aired and read in recent time. Pizza is also an instant food, not a fast food, unlike Shetland's main choices for eating out.

I was looking on various Council websites, both here and Scotland, for a similar case to my own, only to find in December 2015, the Highland Council passed an application to create a cafe/gallery at a remote location in Skye. The proposed site is not within or near to any existing settlements and is 15.6 miles away from Portree, the nearest town. There were no objections from any planning officers. The Scottish Planning Policy document of June 2014 states, "Purpose 1: The SPP promotes consistency in the application of policy across Scotland whilst allowing sufficient flexibility to reflect local circumstance. Status 2: The content of the SPP is a material consideration that carries significant weight though it is for the decision maker to determine the application weight in each case".

Today I have addressed the Chair and its Members, who have the delegated power to over-rule this decision, before I leave this Chamber, irrespective of what decision your make, I am passionate about my cooking and will continue to make pasta and pizzas for my family and friends. If my application fails, it's not me you will be failing, it's the overwhelming majority of the Shetland public who want this to happen".

(The Chair thanked Mr MacColl for his presentation, and invited Members to ask questions).

In response to a question from the Chair, Mr MacColl confirmed that there are two dwelling houses at Parkgate.

In response to questions relating to the justifications in Local Development Plan Policy GP1, "Sustainable Development" for refusing the application, the Planning Officer said that had the application site been in Voe, which is a settlement, the proposal would have been encouraged. In that regard, a Member questioned whether Voe could be considered big enough to sustain a restaurant. The Planning Officer said that developments of this type would be directed to settlements, while he added that he could not specify the size which would be deemed as a settlement.

A Member made reference to Page 100 of the agenda pack, where he questioned why the applicant had not provided a supporting statement, when he had been offered that opportunity in November 2015. Mr MacColl said that he had not noted that request.

In response to questions from Members, Mr MacColl explained that his reasons to locate the restaurant at Parkgate are that tourists come to Shetland for the scenery, and it is about the dining experience. Tourists could go to Brae or Voe, or to Lerwick but there is congestion there and everything is cramped in. There are great views out to Olnafirth, which is all part of the experience of dining, and going out for a drive, and making it a social event. Mr MacColl confirmed that he has never considered locating his restaurant in either of the existing settlements of Brae or Voe.

In response to a question regarding a definition of “adjacent to”, the Planning Officer gave an example from an application presented to the previous Planning Committee, where a piece of land was classed as being adjacent to Voe. In response to questions from Members, as to whether Parkgate could in fact be considered as a settlement; whereby should a retrospective application be submitted for Busta House Hotel whether that would be granted, and in regard to the isolation of the Breiwick Cafe in Eshaness, the Planning Officer said that these were areas where he was not prepared to speculate.

A Member referred to Page 19 of the agenda pack, and to the comment that “...the development is more sustainable located (to existing services, bus routes etc), where she enquired on the definition of a “bus route”. The Planning Officer said he was aware bus services go past Parkgate, however he was not certain on the timetables. He said that a bus route could be a service at 9am to 5pm, but he said that to expand further would only be speculating.

During the discussion, a Member commented on the potential for developments to be granted outwith established settlements. The Planning Officer explained that Policies do not preclude developments outwith settlements, but a reasoned justification should have been submitted why the application should be allowed, where in this particular case that was not presented. He added that each case is determined on its own merits.

In response to a question from a Member, as to whether ownership of land would be considered a reasonable justification to build outside a settlement, the Executive Manager – Planning reminded Members on the role of the LRB, to review the decision that has already been made, and not to go back to review the Development Plan or its content. He acknowledged that Members may want to determine the merits of the application, however he said that it is for the Planning Officer to given factual information. He said that the LRB are to refer to the Local Development Plan, adopted after a significant level of consultation and approval by the Scottish Ministers, and for Members to decide whether to agree with the Officers’ decision and determination of Policies.

During debate, Mr Coutts acknowledged that in this case, it is about the interpretation of the Local Development Plan. Mr Coutts referred to his earlier question in terms of being “adjacent to” an existing settlement, and said that Shetland is a small place and settlements can be small. In referring to Page 43 of the Local Development Plan, he said that within Policy ED1 –“Support for Business and Industry” there is reference to economic growth and sustainable economic development opportunities. Mr Coutts said that in this case, there is a lot of demand for this property. Mr MacColl eluded justification for appeal, and with a view created a sustainable business case. In regard to the traffic numbers, Mr Coutts advised on the significant level of traffic on the road and said that from a carbon element, locals in Brae and Voe make little difference. He concluded by saying that we want vibrant communities, and the development will create employment in a more remote area of Shetland.

Mr Ratter moved that the application be granted. Mr Ratter said that the development is adjacent to the communities of Voe and Brae, and will add to the vitality and vibrancy of the communities of Voe and Brae. In seconding, Ms Manson said that the Council’s policies have put its Officers in a difficult position, but there is a need to read into the Policy. She said that Brae and Voe share many services, for example, the doctor, schools and the post office, so there is constant travel between the

communities. She added that Parkgate is on the main A970 and the bus route to Mossbank, the Isles and to Brae, so there is an endless supply of buses as well.

The Chair said that the purpose of the LRB is to consider applications against Council Policy and whether there are material considerations to relax the Policy. In determining that there was no one otherwise minded, the Chair advised on the decision of the LRB to uphold the appeal.

In response to a comment from Ms Manson in regard to conditions relevant to the application, the Chair explained that normally an application, when approved, has a series of conditions attached. In this case, he explained that the application has gone from a refusal, to being presented to the LRB, with no statutory conditions yet attached, relating to, for example, opening hours, lighting, surface water treatments, and parking. He said that Members can decide if these conditions would be left for officers to determine, in conjunction with the applicant, before the application can be fully addressed. In that regard, Mr Ratter confirmed that the statutory conditions would be required. The Local Review Body concurred.

Decision:

The Local Review Body agreed to uphold the appeal and **APPROVE** the planning permission for the development, for the reasons given, subject to the statutory conditions.

The meeting concluded at 2.40pm.

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Chair