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****submitted via e-planning only****

25th June 2018

Dear Sandra,

Section 42 application to delete conditions 4 and 5 and amend condition 7 of consent 15/01794/PPP at land north of Cardross Primary School, Barrs Road, Cardross.

Keppie Planning have been instructed by Avant Homes to prepare and submit a Section 42 application on their behalf which seeks the deletion of two conditions (conditions 4 and 5) and the amendment of one condition (condition 7) of consent 15/01794/PPP.

Background

The 15/01794/PPP application was submitted on 23rd June 2015 following the allocation of the site in the Adopted Argyll and Bute Local Development Plan (LDP) 2015. A Planning Permission in Principle (PPiP) application was progressed in the first instance – notwithstanding the principle of development having been established through the LDP - in order to confirm a suitable access solution for the site, prior to progressing with the detailed design of the site layout and house types.

The site allocation (LDP ref: H2002) shows an indicative capacity of 158 units. There are no site-specific requirements in the LDP that dictate where access into the site should be taken from. It is acknowledged that access to the site has been the subject of discussions between the Council, the landowner and their planning and roads consultants for a number of years, and that an indicative access solution utilising Darleith Road was presented through the LDP process. It should be noted that this access solution was always indicative (as per the indicative plans submitted through the Main Issues Report and Proposed Plan stages of the approved LDP), and there was no guarantee that the solution could be deliverable in engineering terms or that it could be delivered within the land controlled by the landowner/associated developer.

Council officers contend that the site would not have been allocated without the submitted access solution off Darleith Road however, as noted previously, there are no site-specific requirements within the adopted LDP specifying that the access solution off Darleith Road was a requirement of the allocation. Neither the Council nor the Reporter saw it necessary to condition the allocation of the site on the basis that Darleith Road was the only acceptable access solution. Both the Council and the Reporter had it in their gift to place site specific design/access requirements on the allocation through the LDP, but they did not.

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The 15/01794/PPP application was submitted to Argyll and Bute Council on 23rd June 2015 and was not granted permission until 26th January 2017. The main focal point for discussions during this time centred around the access to the site and the debate regarding the use of Darleith Road versus Barrs Road.

Prior to the submission of the application, and through pre-application discussions between Avant Homes, their transport consultant (at that time SIAS) and Argyll and Bute Council Roads department, council officers had established to Avant that they would be unsupportive of an alternative access solution that saw the primary access point being taken from Barrs Road, and that Avant Homes would have to present a solution from Darleith Road if they were to receive support from the Council Roads department through the application process.

Despite this pre-judgement of the access solution by Argyll & Bute Council Officers, SIAS presented a case within their Transport Assessment, which sought a proportion of units to access the site from Barrs Road (60/40 split between Darleith Road/Barrs Road) and supported this case with established technical evidence, which demonstrated the suitability of the use of Barrs Road.

Ultimately, and despite lengthy discussions during the course of the application, Avant Homes were forced to progress with an access solution via Darleith Road with a limited number of dwellings using Barrs Road as their main access point, as it was clear that the Council would not support any other access solution. For commercial reasons, Avant Homes had to progress to the determination of the application in accordance with the Council's wishes, despite a strong reluctance to do so. Avant Homes and their consultants have always refuted that this access solution was the best solution for the proposed development and the existing residents in this area of Cardross.

Conditions were attached to the consent which sought to ensure that the Darleith Road solution was undertaken in a manner which was acceptable to the Council.

These conditions are detailed below for clarity and ease of reference:

4. Unless otherwise agreed in writing by the planning authority in consultation with the Council's Road Network Manager no development shall commence unless and until the following road improvements to Darleith Road have been provided to the satisfaction of the Planning Authority in consultation with the Road Network Manager:

- (i) The provision of a suitable traffic calming scheme (give and take priority) between Barr's Terrace and Mill Road. This shall also include the provision of a minimum of 10 new off street car parking spaces, as shown on plan TIAVCAR2_SK003 C*
- (ii) Road improvement between Mill Road and the proposed development site entrance as identified on plan TIAVCAR2_SK002 B*
- (iii) The provision of a passing place immediately to the north of the proposed site development entrance in order to accommodate large vehicles passing in opposite directions*
- (iv) The provision of street lighting to the north of the new access to the development, the exact location to be agreed in consultation with the Council's Road Network Manager*

- (v) *The existing lighting between Mill Road and the existing 30 mph speed restriction limit shall be upgraded*

5. Unless otherwise agreed in writing by the planning authority in consultation with the Council's Road Network Manager no dwelling house shall be occupied unless and until the existing 30 miles per hour (mph) speed restriction on Darleith Road has been extended and brought into effect to a location north of the Darleith Road site access, the exact location to be to be agreed in consultation with the Council's Road Network Manager.

7. Pursuant to condition 1 – no development shall be commenced until full details of the internal road layout within the development have been submitted to and approved in writing by the planning authority. The development layout shall ensure that no more than 20 dwelling houses will be served from the east access, i.e. via Barrs Road. All other vehicular traffic will be required to access the development site from Darleith Road. The internal roads shall be constructed in accordance with the principles of Designing Streets.

Before assessing the requests to delete conditions 4 and 5 and amend condition 7, the following supporting text will provide the Council with an update in relation to third party land investigations, a review of an alternative access solution from Barrs Road and further commentary in relation to the 10 parking spaces as sought via condition 4.

Third Party Land – National Trust Scotland

With regard to the requirements of condition 4, the only way to address these would have been through the purchase of third party land. Avant Homes engaged with The National Trust for Scotland (NTS), who are the third-party landowner of ground to the west of Darleith Road. This land was required to facilitate in particular, but not exclusively, the proposed traffic calming and 10 new off-street car parking spaces that were being required through condition 4. Avant Homes met with NTS on site and have had a series of correspondence relating to the land purchase. This culminated in an email dated 7th April 2017, where NTS formally confirmed that they were not willing to sell their land. This email has been appended to this submission on a private and confidential basis only.

Following NTS's confirmation that they were unwilling to sell their land, Avant Homes further investigated the alternative access options for the site, i.e. all access to be taken from Barrs Road. Access from Barrs Road would negate the requirement for any road works, upgrades or improvements to be undertaken on Darleith Road and therefore, there would also be no requirement to purchase third party land.

Notwithstanding the land ownership issue, it is further submitted that the engineering and road works required to create the 10 new parking spaces would not be commercially feasible or practical. The land sits over a steep embankment and would require extensive, and extremely expensive engineering works in order to form road supports. These works would be entirely out of proportion with the benefit that creating 10 new parking spaces create – and that is to say nothing about the costs that would fall on the Council in terms of inspection, maintenance and repair, which would be required once adopted. To install the parking in this location would also result in a significant environmental impact, with extensive tree removal being required, along with loss of habitat and habitat disturbance. In terms of local public amenity, there would be a negative visual impact on the street-scene and it would be

significantly negative for the residents whose properties face onto the southern portion of Darleith Road.

Considering that the required third-party land is not available for purchase, that the economic viability of creating 10 new parking spaces makes it unfeasible and impractical and that the environmental and visual impact impacts that the loss of trees would have upon the local residents, it has been concluded that the road improvement scheme required through the conditions is not appropriate, and that an alternative access solution is required to progress with the development of the site. In this regard, Avant Homes commissioned new transport consultants to review the development site from a fresh perspective. In this respect, the proposal is to provide a more appropriate, safe, alternative access solution from Barrs Road, with no access to be taken via Darleith Road. This alternative access solution requires the deletion of conditions 4 and 5 and amendments to the wording of condition 7 to allow the approved development to progress and allocation of residential land to be fulfilled.

Third Party Land – Unknown Ownership

In addition to the requirement to purchase third party land to the west of the southern portion of Darleith Road, there is also a requirement to purchase third party land on the eastern side of Darleith Road at the northern end of the road, and to the south of the site entrance, as per condition 4(ii). The land in question within this portion of Darleith Road is within the road verge however, Argyll and Bute Council have been unwilling to allow these works to take place as part of upgrades to the adoptable road. Under legal advice, they have insisted that only half the verge could be considered adopted, measured from the halfway point of the root/branch stem of the hedges that run along the road, despite the fact that the titles to the properties behind the hedges do not extend to the halfway point. Argyll and Bute Council have subsequently stated that the owners of the solum of the road would also have to agree to the road widening in this instance.

Unfortunately, the Council do not hold accurate plans for their adopted roads and associated verges and Avant Homes have been required to instruct two separate land ownership investigations, at considerable expense. The land searches related firstly to the title along the road, which confirmed the extent of the verge and then secondly, to find the original owner/s of the solum of the road. Avant have confirmed that the ownership of the solum of the road lies with the Estates of Kilmahew and their successors. This organisation is no longer in existence and tracking their successors would be entirely impractical. Potentially, the number of successors in title could be numerous, with no guarantee that they would be domiciled in Scotland or the UK, or that they would agree to allow the works to go ahead. To undertake further investigation of this would be time-consuming, very expensive, and ultimately, could prove entirely futile.

Given the Council will not allow the road widening to be carried out as part of the adopted road works, and that Avant are unlikely to be able to track successors in title without a lengthy and expensive investigation, it is clear that access to the site cannot be achieved in terms of the conditions attached to the 15/01794/PPP consent. In this context, Avant Homes have taken the decision to put further land investigations on hold, and to pursue a more realistic, reasonable, appropriate and achievable access solution from Barrs Road, thus removing any requirement to purchase third party land on Darleith Road.

10 parking spaces

Notwithstanding the issues surrounding the availability of land, the cost and the impact of creating 10 parking spaces to the west of Darleith Road, we would also question the number of parking spaces that are required. The reason given within the consent notice states that 10 parking spaces are required for "compensatory parking". It is noted that the scheme of improvement works favoured by the Council does not displace 10 existing car parking spaces. In fact, the installation of the traffic calming measures would displace only 3 existing parking spaces. As such, the requirement to provide 10 new parking spaces cannot reasonably be considered to be linked to the proposed development and would therefore, constitute an unreasonable element within condition 4.

The Council have not provided any evidence to support the requirement for 10 parking spaces within the improvement works on Darleith Road. The existing parking situation on Darleith Road is not ideal and the situation has been exacerbated over the years through the Council's removal of on street parking along the A814, which has in turn put pressure on existing parking availability on the surrounding streets, Darleith Road in particular. This is a problem that currently exists and it is for the Council to review and resolve themselves. The onus for Avant Homes to create 10 parking spaces, in part to replace lost spaces through the proposed Darleith Road improvement works is therefore unreasonable. This provides further justification for the progression of the alternative access solution via Barrs Road and the subsequent deletion of condition 4.

Barrs Road Access

As discussed above, there are substantiated reasons why the improvement works required to make Darleith Road an acceptable access solution for the site are not appropriate, feasible, reasonable or available in land ownership terms. In this regard, and as supported by the accompanying Access Appraisal, there is a more appropriate access solution readily available from Barrs Road. This can adequately accommodate the level of proposed development and is safer, does not require significant and costly engineering and road work solutions and would have much less of an impact on the local environment and community.

Avant Homes commissioned Modus Transport Solutions Ltd (MTS) to review the site afresh, with specific regard to the only consultation response received from the Council's Roads department dated 10th June 2016. Taking account of the historic discussions and the improvements being sought on Darleith Road, Modus have concluded that access to the site should be taken from Barrs Road, and that Darleith is not (and never was) the logical direction from which to focus access into the site.

The access appraisal should be read in its entirety and in conjunction with the associated independent supplementary Stage 2 Road Safety Review prepared by Stewart Paton Associates however, the main conclusions of these reports are summarised in this supporting statement.

From the updated review of the consultation response from the Council dated 10th June 2016, Modus have identified that the justification put forward by the Council in relation to the sole use of Darleith Road (with the exception of 20 units) as the main site access, and the required mitigation, has not been substantiated with any technical evidence. The Council's justification for steering access away from Barrs Road - when it appears from all of the available evidence to have been the most logical option - lacks quantifiable evidence.

The traffic impact assessment (contained within the access appraisal) has *“demonstrated that the local road network can adequately accommodate the proposed changes to the development access route with no impact upon the safe operation of the junction considered”* (MTS, Access Appraisal, June 2018, page 17). Where the proposed development would have no impact upon the safe operation of the A814/Muirend Road priority junction, it has been concluded that the proposed development site can be accommodated within the existing local road network and that access to the site via the A814/Muirend Road junction is a wholly suitable access solution for the proposed development.

With regard to the Council’s perceived (and unsubstantiated) issue with parking on Barrs Road, MTS have undertaken comprehensive parking surveys to illustrate and quantify the existing parking activity.

The parking surveys identified that *“there is a significant level of on street parking available on Muirend Road, Barrs Road and Richie Avenue”* (access appraisal, page 22). The conclusions from the parking survey have concluded that *“the parking activity on Muirend Road, Barrs Road and Richie Avenue is very low in relation to the theoretical parking capacity. It recognised that there are some areas of concentrated parking on Barrs Road however, the parking activity which does take place does not affect the free flow of traffic nor does it cause a safety issues”* (access appraisal, page 22).

An independent Stage 2 Road Safety Review was undertaken by Stewart Paton Associates and should be reviewed in conjunction with the access appraisal. This safety review concluded that *“there were no significant issues with the proposed route to the development site and that that no road safety concerns were identified as a result of the proposed development traffic using Muirend Road and Barrs Road”* (access appraisal, page 24)

The safety review recommends a few minor improvements (e.g. introduction of double yellow lines, refreshing existing give way markings, use of a raised table/s, etc.). The recommendations are minor in nature and the majority should be undertaken as part of the Council’s maintenance programme. Avant Homes have taken these recommendations into account during the detailed design of the new access to the site from Barrs Road.

Overall, the supporting transportation studies have demonstrated that the use of Barrs Road is a reasonable, deliverable solution, which can be implemented in terms of the impact on the existing junctions and would not cause safety issues. It is submitted that this alternative access solution is significantly superior to the Darleith Road access proposal, which the Council are seeking to impose via the conditions on consent 15/01794/PPP. There is no apparent reason why this revised access solution using Barrs Road should not be supported by the Council.

Principle of Development

The principle of residential development on this site has been established through the allocation of the site as a housing allocation (ref: H2002). The planning committee reports (dated 13th June 2016) have confirmed that the site is on a site allocated for housing and that the proposals would accord with development plan policy, subject to conditions requiring the submission of further Approval of Matters Specified in Conditions (AMSC) applications. The principle of residential development is fully in accordance with the Local Development Plan (March 2015).

The adopted LDP has no site-specific requirements which specify that the access solution off Darleith Road was a requirement of the allocation. Neither the Council nor the Reporter at that time saw it as necessary to limit the allocation of the site on the basis that Darleith Road was the only acceptable access solution. Both the Council and the Reporter had it in their gift to place site specific design requirements upon the allocation through the LDP, but this was not done. In this regard, the access options for the site should be fully open to consideration by the Council and the applicant has put forward a strong technical case for the use of Barrs Road instead of Darleith Road. It is requested that the access solution via Barrs Road as submitted via this application is assessed by the Council in relation to its suitability to be the sole access point for the development site.

Deletion of Conditions 4 and 5

Circular 4/1998 The Use of Conditions in Planning Permissions sets out six tests with which to establish the validity of a planning condition, and conditions should only be imposed where they are *"necessary, relevant to planning, relevant to the proposed development to be permitted, enforceable, precise and reasonable in all other respects"*.

Notwithstanding that there is no opportunity to purchase the required third-party land, which would allow the provisions of condition 4 parts (i) and (ii) to be fulfilled, it is also submitted that condition 4 parts (i), (iv) and (v) are not *'relevant to the development to be permitted'*. Circular 4/1998 provides an example of where a condition may not be relevant to the development permitted and states that *"For example, if planning permission is being granted for the alteration of a factory building, it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists"*. In terms of condition 4, it is wrong to impose requirements, simply to address an existing need. It is our view that asking for provision of 10 new car parking spaces when only 3 are displaced, in order to solve an existing issue with on-street parking, which has itself been caused by the removal of parking on the A814, is simply wrong. Similarly, the requirement for existing lighting to be upgraded and lighting to be provided to the north of the site access (where there are no pedestrian linkages) are unrelated to the impacts of the proposed development, these provisions of the condition would be seeking to rectify an existing deficiency over which the Council has control.

The general reasonableness of condition 4 is also now questioned where the applicant has demonstrated that they have no access/control over the land required to implement condition 4. Circular 4/1998 states that *"a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out"*. At the time of the determination of the application, Avant Homes did not have any agreement with the National Trust for Scotland and subsequently, it has been established that the land is not available for sale. Therefore, the applicant will not have sufficient control over the land to enable the works to be carried out.

Taking all of the above into account, and having regard to the supporting information submitted with this Section 42 application, where there is a safe access solution via Barrs Road which works in terms of junction capacities etc., it is submitted that a case has been demonstrated that there is no requirement for access to be taken from Darleith Road.

In this regard, there is no requirement for conditions 4 and 5 to remain on the consent and we are seeking their deletion from the 15/01794/PPP consent.

Amendment to Condition 7

Having regard to the case presented through this supporting letter and the supporting technical assessments, it is submitted that the wording of condition 7 is not appropriate. We would suggest that this condition is amended per the following text, which removes the restriction upon the number of dwellings that can use Barrs Road, as well as the reference to the use of Darleith Road:

7. Pursuant to condition 1 – no development shall be commenced until full details of the internal road layout within the development have been submitted to and approved in writing by the planning authority. The internal roads shall be constructed in accordance with the principles of Designing Streets.

Conclusions

This application seeks permission to delete conditions 4 and 5 and amend the wording of condition 7. Specifically, the reasons for seeking the deletions and amendment to these conditions are: 1. we have demonstrated that we are unable to purchase or take control of the required third party land, neither for the parking spaces, nor the passing places; 2. the cost, scale and deliverability of the engineering solution to create 10 parking spaces is entirely impractical, and out of all proportion with the development – and is not in the long term maintenance interests of the council; 3. the environmental impact of the proposed works would be significant and out of scale and would forever change the street scene, wildlife habitat and public amenity views within the locale; and 4. the suitability of an alternative, safer route to the site should take primacy.

The applicant reluctantly agreed to the wording of these conditions through the processing of the application and has always disputed the appropriateness of the use of Darleith Road - given the extent of the existing issues - as the main access to the site. The applicant did however agree to further investigate the opportunities available to them to purchase the land required for the improvements works on Darleith Road. In this regard, the National Trust for Scotland have confirmed that they do not wish to sell their land. In terms of the road solum, securing agreement from the owners of the solum of the road, who might exist in their hundreds and be located across the world, is not in a practical or achievable requirement. Where land is not available to facilitate the improvement works on Darleith Road, the alternative solution via Barrs Road is appropriate and the proposed deletions and amendments to conditions can be accommodated.

I trust that the above, and the information submitted in support of this Section 42 application is clear however, if you require anything further to aid the progression of the application to a positive determination, please do not hesitate to contact me.

Yours sincerely



Laura McGowan

Senior Planner

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Appendix – Extract from email correspondence between Lucy St Johnston of The National Trust for Scotland Andrew Trigger of Avant Homes dated 7th April 2017.

Extract from email correspondence between Lucy St Johnston of The National Trust for Scotland and Andrew Trigger of Avant Homes dated 7th April 2017.

Email title: In Confidence: Geilston House & Garden

Andrew

Thanks for the prompt.

Following a couple of meetings last week I am now in a position to let you know that whilst the Trust do own the area of ground in question they are not willing to dispose of this ground.

With kind regards

Lucy

Lucy St Johnston MRICS

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