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Date: 2 November 2012

Richard Kerr
Planning Department
Argyll & Bute Council
Whitegates Office
Whitegates Road
LOCHGILPHEAD
PA31 8SY

By email: Richard.kerr@argyll-bute.gov.uk; centralvalidationteam@argyll-bute.gov.uk

Dear Mr Kerr

Roc Sandford
Planning application 12/01176/MFF

We act for Roc Sandford, the proprietor of Gometra, who has of course already lodged specific planning objections with your department.

For our part, and on his behalf, we attach an appendix setting out various legal objections which, in our submission, militate against planning consent being granted without various important issues being considered in much greater detail. If the Council is to insulate itself from legal challenge, then we would urge the Committee to take the attached points on board at or in advance of Monday's meeting.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Barry Love".

Barry Love
for Environmental Law Chambers Ltd
(barry.love@elchambers.com)

cc.

Councillor Gordon Blair; Councillor Rory Colville; Councillor Robin Currie;
Councillor Mary-Jean Devon; Councillor George Freeman; Councillor Fred Hall;
Councillor David Kinniburgh; Councillor Alistair MacDougall; Councillor Robert Graham MacIntyre
Councillor Donald MacMillan; Councillor Alex McNaughton; Councillor James McQueen;
Councillor Sandy Taylor; Councillor Richard Trail

APPENDIX

Legal Ground of Objection

Ground 1: That the Council will be in breach of its EU law obligations if it allows the assessment of potentially significant environmental impacts to be dealt with by SEPA outside the EIA process.

It is not lawful for the impacts upon the marine environment to be delegated to SEPA and thereby divorced from the planning appraisal process. The environmental impacts require to be dealt with holistically. SEPA themselves have been internally inconsistent, having first indicated that the proposal would be “likely to impact significantly on the water quality”, and then giving no such indication in their response to the Council during the EIA consultation process. Planning considerations must be formally linked to environmental considerations, with planning authorities being obliged to take account of the impact of pollution, rather than simply leaving pollution impacts to be dealt with by another agency. It is therefore submitted that, at the very least, (1) planning consent should not be granted until the application for a CAR licence has been determined and (2) compliance with the CAR licence, if granted, should itself be a condition of any planning permission.

Ground 2: That the Council will breach its statutory duties on NSAs

The planning authority’s obligation is to ensure that in exercising its planning powers, “special attention is paid to the desirability of safeguarding or enhancing [the NSA’s] character or appearance”.

With respect, the advice being provided by SNH is flawed and should not be followed. SNH have focussed on whether the development would undermine the integrity of the NSA as a whole, whereas the Council’s obligation relates to giving special attention to “safeguarding” or “enhancing” the NSA. Currently, there is no evidence that the Council intends giving the required “special attention”, nor any evidence in relation to safeguards or enhancements. On the contrary, all available information indicates that the development will have a detrimental effect. It is thus impossible to see how, based on the information currently before the Council, the Council can show that it has discharged its statutory duty.

Ground 3: That the Council will breach its statutory duties on Biodiversity

In exercising its planning functions, the Council is under a duty not just to have regard to, but to “further” the conservation of biodiversity, and must have specific regard to both the Rio Convention and the Scottish Biodiversity Strategy.

Yet we note that the Council’s Biodiversity officer does not appear to have provided any input, or to have responded as consultee within the planning process to date.

Without any such input, the Council cannot fulfil its statutory duty to “further” the conservation of biodiversity.

Ground 4: That the Council will breach the requirements of the EIA Directive in relation to cumulative impact.

The Council cannot rely on the existing Environmental Statement in order to determine the cumulative effects of the project, as the ES is inadequate in this regard, and fails even to cover the issues required by the Council in its Scoping Opinion.

In addition to their general concerns about the lack of detail on cumulative impact, SNH have (quite rightly) suggested that a Landscape Capacity Study for aquaculture in the Loch na Keal NSA should be carried out to guard against gradual attrition. Such a Study would indeed be useful, not only in order that the Council might properly discharge its duties in relation to safeguarding or enhancing the NSA, but also so that the Council has reliable information to hand to assess the cumulative landscape impacts from its own continued consenting of aquaculture developments.

Cumulative impacts have also been covered inadequately in relation to the cumulative impact from sea lice. As Marine Scotland Science have themselves indicated, the magnitude of the likely detrimental effects of sea lice propagation from fish farms upon wild salmon and sea trout populations is not well understood. Moreover, the applicant admits that it has yet to identify a suitable means of treating a biomass of the proposed size for sea lice. Given the difficulties in controlling sea lice (as evidenced by the frequency with which the applicant fails Marine Scotland Science monitoring of the Code of Good Practice on Scottish Finfish Aquaculture on sea lice loads, including on its neighbouring sites), it would clearly be scientifically unsafe to grant planning permission without details of the therapeutic regime proposed and further analysis of the cumulative impact which that regime is likely to have.

Moreover, it is settled law that the decision taker must have regard to the precautionary principle and should require further information to be produced to it prior to any decision being taken.

Ground 5: That the Council will breach the requirements of the EIA Directive in relation to alternative sites.

The ES does not adequately consider the main alternative sites studied by the applicant or explain, from the perspective of environmental effects, why the other options were ruled out and why the proposed option was the most favourable.

Also, the Council's Scoping Opinion required consideration of alternatives in terms of "site layout and other design considerations", and the ES fails to do so.

Accordingly, the Council should not grant planning consent based on incomplete information and should require appropriate information to be submitted by the applicant.

Ground 6: That the Council will breach the Habitats Directive

The ES fails to demonstrate beyond reasonable scientific doubt that the project will not have an adverse impact on the integrity of the Treshnish Grey Seal and Rocky Reef SAC and the Mingarry Freshwater Pearl Mussel SAC. Accordingly, to consent this site would be a breach of Article 6(3) of the Habitats Directive.

SNH, in their evidence, explicitly excluded consideration of any but the designated species with respect to the Natura sites, but this is an overly narrow interpretation of the legislation. An appropriate assessment should be carried out, to consider impacts not just on grey seals, fresh water pearl mussels and rocky reefs, but also on common seals, porpoise, dolphins, whales, salmon and sea trout, which must be all afforded the same protection as if the neighbouring SAC was designated for these species.

Ground 7: That the proposal is contrary to the development plan.

In considering the development plan policies, the report to committee refers to "LP Aqua 1" noting that it expresses general support for fish farming, **subject to there being no significant adverse effect on 10 specified considerations**. It is contended that, contrary to the report to Committee, the proposal violates each of those 10 considerations, as follows (and we invite elected members to form their own view as to when an adverse effect becomes "significant"):

1. Communities, settlements and their settings

The Isle of Gometra community, lacking reasonable access to school, doctor or reliable telecommunications, have only remarkable biodiversity and pristine landscape as resources, and these are significantly adversely affected by the proposal.

2. Landscape character, scenic quality and visual amenity

This issue has been dealt with elsewhere in Mr Sandford's correspondence with SNH, which has been copied to the Council, detailing the many ways in which ASHs LVIA exercise is not fit for purpose.

4. National Scenic Areas and Areas of Panoramic Quality

Both impacted significantly, as dealt with above under "2. Landscape character, scenic quality and visual amenity", and also dealt with separately in this letter regarding the Council's duties in relation to NSAs.

5. Statutorily protected nature conservation sites, habitats or species, including priority species and important seabird colonies along with wild fish populations

Wild salmon and sea trout are present around the site, as are priority species in the nearby SACs including cetaceans, seals, basking sharks, all as dealt with elsewhere in this letter.

6. Navigational interests

The entire population of the island have expressed concerns that their lives will be put at elevated levels of risk when accessing schools, doctors etc, by this development forcing them out of the lee of Gometra towards the centre of Loch Tuath where wind,

wave and tide interact to make what are on occasion truly life-threatening conditions for boats with a shallow enough draft to access Gometra's pier. It is not possible to tell in advance when these conditions are going to occur, above all when making the passage home from school or doctor leaving Ulva Ferry.

7. Areas of Isolated Coast (coastal area of 'very sensitive countryside')

As we understand it, where proposals are within the sensitive or very sensitive countryside development control zones, the policy requires there to be demonstrated a direct operational need tied to a specific location. But in this case no direct operational need for this site, above others available throughout the Hebrides and on the Isle of Mull, has been demonstrated.

8. Sites of historic or archaeological interest and their settings

The proposal forms part of the wider setting of the Scheduled ancient monument on Cairn na Burg and will be passed by the majority of visitors to the monument.

9. Recreational interests

This is one of Scotland's iconic historical and cultural landscapes, enjoyed by thousands of access takers, recreational water users, and tourists from all over the world.

11. Existing aquaculture sites

The proposal is flanked on either side by two oyster farms, whose existence appears to be denied by the planning officer's report to councillors.

12. Water quality

Separate submissions have been made to SEPA and to Scottish Ministers expressing concerns that the levels of pollution allowed under a CAR licence will result in breaches within Loch Tuath of water quality standards set under the Water Framework Directive. As expressed elsewhere in this letter, planning decision takers should take important issues like this into account, rather than in effect delegating them to an outside agency.