



Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2254
- Site address: Annat Pier, Corpach, Fort William, PH33 7NB
- Appeal by Boyd Brothers (Haulage) Ltd against the decision by Highland Council to grant planning permission reference 20/02027/S42 dated 27 May 2021 subject to conditions.
- The development proposed: Develop land without compliance with condition 1 previously attached to planning permission reference 99/00458/FULLO of the Use of Pier Without Compliance with Restrictive Conditions Annat pier, Corpach Fort William
- The condition appealed against is: “7. No development shall commence until detailed proposals for the establishment of an Annat Pier Liaison Group have been submitted to, and approved in writing by, the Planning Authority. Such proposals shall include the intended membership of the Liaison Committee and the frequency of its meetings. The Annat Pier Liaison Group shall thereafter meet during the temporary period of one year authorised by this planning permission unless otherwise agreed in writing by the Planning Authority.”
- Date of site visit by Reporter: 17 September 2021

Date of appeal decision: 9 November 2021

Decision

I allow the appeal and vary the terms of the planning permission by deleting condition 7.

Background

Planning permission 99/00458/FULLO was granted on 17 July 2000 and provided for the use of the extended Annat Pier without compliance with certain restrictive conditions. It extended working hours to between 0600 and 2200 hours but Condition 1 of that planning permission provided that there should be no operations on Sundays. On 20 July 2010 an application to allow Sunday stevedoring, that is loading and unloading of cargo, was dismissed by the council, a decision subsequently upheld on appeal.

Application 20/02027/S42, now under this appeal, sought to carry out operations without compliance with the original condition 1 by permitting berthing and disembarking on Sundays but no stevedoring.

The report on the application to the council’s South Planning Applications Committee recommended that planning permission be granted subject to six conditions. Condition 1 provides for the allowance of Sunday berthing to be for a trial period of one year. This application was approved by the committee and permission was granted on 27 May 2021. In addition to the six conditions recommended by officials a seventh was added by the

committee as noted above in the appeal details. It is this condition that is the subject of the appeal.

Reasoning

1. The determining issue in this appeal is whether condition 7 meets the six tests in Circular 4/1998 The Use of Conditions in Planning Permissions. These are: necessity, relevance to planning, relevance to the development permitted, enforceability, precision and reasonableness in all other respects.
2. The appeal site is part of a long established industrial area, formerly occupied by the former Corpach pulp and paper mill. Its industrial designation in the local development plan extends to 70.3 hectares, with the pier being located at its eastern end. Overall uses include a saw mill, and transport firms and there is an industrial estate at its western end.
3. The pier use was established in 1993 and has since been extended. A variety of vessels use the facility including bulk cargo vessels up to 4,000 deadweight tonnes, coaster vessels, fish carrier vessels and smaller work vessels.
4. The committee report notes there are ongoing issues around noise and light disturbance at the site. The council received seven representations in response to the original application, four objecting to the proposal and one in support. In addition five representations were received direct to DPEA from individuals and community councils.
5. As well as referring to existing noise and light issues and alleged breaches of the existing planning permission there was support for setting up a liaison committee to monitor the use of the pier and consider any issues arising. There is conflicting evidence about the nature and extent of noise generating events, including work being carried out on vessels on Sundays. Whilst problems have undoubtedly arisen I am unable to draw firm conclusions as to the extent of these, and matters are currently being investigated by the council.
6. Turning to the proposed condition itself, I am satisfied that it is relevant to planning, relevant to the development permitted, enforceable and precise. In considering whether it is necessary or reasonable in all other respects I must take into account that the permission granted in terms of the Sunday berthing is for a limited period of one year. At the end of that period a further application would be required to make the provisions permanent.
7. The appellant argues that as the permission is only temporary it is not a constructive use of resources or time to form a liaison group for a twelve month period, especially as it has no intention of pursuing a further application for a permanent permission under these conditions. It remarks it is unaware of any restrictions on Sunday berthing on any other west coast of Scotland industrial port or quay. I have no evidence of circumstances elsewhere but in any event each case must be judged on its own merits.
8. From a practical point of view, whilst there are undoubtedly issues that need to be resolved, not all of which directly involve the appellant, I consider the council's investigations should be allowed to reach their own conclusions. As there is a time limit of one year on the proposed Sunday berthing condition, I do not consider that this is sufficient to justify setting up a special committee to consider what is likely to be a relatively small

number of Sunday berthing occurrences. In these circumstances I do not consider condition seven to be either necessary or reasonable in all other respects. Whether or not such a committee should be established in the future would be a matter for further consideration in due course.

9. The council has proposed in its response to the appeal that in the event of my allowing it condition 1 trial period should be amended to three months rather than 12, which would allow a short period for the impact to be assessed. I do not however consider such a short period would be adequate to allow for a proper assessment of the impact of Sunday berthing, especially as there is no guarantee that the number of such berthings would be significant within the trial period. Twelve months, as proposed in the committee report and accepted initially by the council, would allow a much more relevant trial period.

10. As I have found condition 7 does not fully meet the tests set out in circular 4/1998 I am allowing the appeal and deleting the condition. I am imposing the remaining conditions as granted by the council, subject to minor editing and changing the date for the commencement of the trial period to that of the date of this notice.

11. I have considered all other matters raised but find none to make me change my decision.

Trevor A Croft

Reporter

Conditions

1. There shall be no operational use of the jetty between the hours of 2200 and 0600 on the following morning on any day Monday to Saturday other than with the prior written approval of the planning authority. Similarly there shall be no Sunday operations, with the exception of berthing of vessels for a trial period of 12 months, commencing on the date of this permission and ending one year later. Movement on or off vessels on Sundays is strictly limited to crew and passengers only.

Reason: to allow the planning authority to retain effective control over development and to mitigate any nuisance arising in the interests of amenity.

2. The materials which can be handled on the jetty shall include, among other things, timber products and other bulk products.

Reason: to allow the planning authority to retain effective control over development and to mitigate any nuisance arising in the interests of amenity.

3. The applicant shall ensure that any bulk product stored temporarily on the pier or associated areas awaiting transport does not give rise to dust or odour nuisance or other pollutants at the nearest sensitive properties, and so to that end shall regularly undertake appropriate mitigation measures to avoid nuisance, to the satisfaction of the planning authority.

Reason: to allow the planning authority to retain effective control over development and to mitigate any nuisance arising in the interests of amenity.

4. Within six months of the date of this permission the applicant shall submit a Noise Assessment for the further approval in writing of the planning authority. This will assess existing background and predicted noise levels arising from the proposed use of the jetty and shall contain recommendations for practical mitigation of any potential noise nuisance arising which shall be put into effect subject to the prior agreement and approval in writing of the planning authority.

Reason: to allow the planning authority to retain effective control over development and to mitigate any nuisance arising in the interests of amenity.

5. All the conditions imposed in application LO/19931177 except as expressly amended hereto will continue to apply.

Reason: to allow the planning authority to retain effective control over development and to mitigate any nuisance arising in the interests of amenity.

6. Prior to the commencement of the approved temporary trial period for Sunday berthing, referred to in condition 1, a copy of the amended port procedures in relation to the mitigation of noise shall be submitted to and approved in writing by the planning authority. The approved port procedures, as amended, shall thereafter be implemented from the date of commencement of the trial period.

Reason: to mitigate any nuisance arising in the interests of amenity.