

Ref: GLA/0512002

4th June 2018

Mr Richard Kerr
Argyll & Bute Council
Whitegates Office
Whitegates Road
Lochgilphead PA31 8SY

By email to richard.kerr@argyll-bute.gov.uk

Dear Richard

18/01125/PP | Use of land to accommodate the temporary storing of aquaculture equipment for undertaking maintenance (retrospective) | Land West Of Dawnfresh Farming Loch Etive Trout Farm Inverawe Taynuilt Argyll And Bute PA35 1HU

I act for Friends of Loch Etive (FoLE).

FoLE objects strongly to the above application by Dawnfresh.

Recent planning history of the site

On 26th February 2015, FoLE provided the Council with photographic evidence of the mooring of unused cages on the shoreline at Inverawe and suggested to the Council that those cages were present without planning permission. The Council responded on 26th February 2015 stating that it would “*pursue that as an enforcement matter with Dawnfresh*”.

The Council wrote to Dawnfresh on 20th March 2015 concerning the storage of flotation rings and cages at the shoreline at Inverawe and the Council recorded that Dawnfresh “*have undertaken to establish a date by which these will be removed and to inform me [the Council] accordingly*”. The letter also records that “*beyond that, you [Dawnfresh] indicated*

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that as part of routine operations in the loch there would be future occasions when other rings would be expected to be brought ashore for similar purposes”.

On 2nd June 2015, the Council confirmed to FoLE that it had *“issued correspondence to Dawnfresh advising that the planning authority is of the opinion that the storage of the equipment at Etive 1 for a prolonged period of time is a material change of use of the land requiring planning permission and that they had requested that the equipment be removed or a planning application should be made within 28 days. The planning authority made it clear that in default of either of these options it would consider taking enforcement action.”*

The Council confirmed that a Planning Contravention Notice was served in respect of unpermitted use of Inverawe shoreline.



On 13th August 2015, the Council informed FoLE that *“Dawnfresh have now cleared the area of equipment. Please see the attached photograph. We had advised them that should they have a future requirement to use this area intermittently for maintenance, then they should apply for planning permission for a change of use”.*

It is clear from correspondence that, in 2015, Dawnfresh recognised that the storage of cages on the Inverawe shoreline was occurring without planning permission and unlawfully, else they would not have undertaken to remove the cages. Dawnfresh also understood that future regular use of cages of the land for storage of cages would require planning permission to authorise the use of the land for that purpose.

However, in 2016, Dawnfresh applied instead for a Certificate of Lawfulness (reference 16/00263/CLAWU - Application for Certificate of Lawfulness - Change of use of land for the maintenance and storage of fish farm equipment at Inverawe, Loch Etive), the applicant's suggested existing use being "...to enable suitable repair and maintenance is undertaken".

However, the Council refused that application.

Rather than accept, at that stage, that a full planning application had to be made, Dawnfresh appealed against that refusal to Scottish Ministers, but the Reporter appointed by Scottish Ministers upheld the Council's decision (Decision by Frances M McChlery, Reporter appointed by the Scottish Ministers, 10th January 2017): *"I therefore conclude that the appellants have failed to demonstrate that the site applied for has been used for the use applied for the necessary period of time to establish lawfulness of that use. I find that the council's decision was well founded and I conclude that the certificate should not be issued"*.

On 16th March 2017, the Council was forced to serve a Section 33A Notice requiring the submission of a planning application, failure which there should be a cessation of operations on the Inverawe shoreline, despite which the use of the shoreline to store old fish farm cages continues.





It is against this backdrop that the current application is now made.



(above shows the shoreline in January 2018)

The landscape impact on this part of Loch Etive

Since 2008, within the last ten years, there has been a very great increase in fish farming activity on Loch Etive, firstly moving from mussel farming to trout farming, which is a far more intensive operation, and then following the expansion of the number of trout farms on Loch Etive, including the construction of the Etive 4 (Airds Bay) farm in 2008, the ending of the 'one-stocked one-fallow' rotation between Etive 3 (Port na Mine) and Etive 4 and, most recently, the increase in tonnage of farmed fish held at Etive 4 and the construction of the largest farm on Loch Etive, with permanently moored feed barge at Etive 6 (Sailean Ruadh), in 2014.

Indeed, SEPA data shows that the biomass of fish actually held on the applicant's Loch Etive farms has increased by between 300 and 500% since 2010.

All Loch Etive's fish-farms are operated by the applicant and are served from the shorebase at Inverawe and this has led to a very marked increase in the intensity of use of the shorebase since 2008, and of the adjacent shoreline, which is the land subject of this application.

However, this part of Loch Etive is a very sensitive landscape. Loch Etive enjoys many designations for the protection of landscape. Indeed, the removal in 2016 of the Etive 1 fish farm cages at Inverawe West farm was secured, pursuant to a section 75 agreement made between the Council and the applicant in 2014, to allow for the new large farm at Sailean Ruadh (Etive 6), at least in part on landscape grounds.

Regrettably, the old Etive 1 moorings, just offshore of the Inverawe shoreline, are now used to moor a range of the appellant's industrial fish-farm support boats, well-boats and the like, pursuant to a recently-granted Marine (Scotland) Act 2010 licence. The range of boats and vessels associated with the fish farms that can be moored there is shown in the photo below, adding to overall industrialised feel of the Inverawe area:



No planning permission at the shorebase

As Reporter noted on her site visit in 2016, the shorebase is now a substantial operation - *“On my site inspection, seen from the appeal site, the shore base presents as a substantial group of miscellaneous buildings, yards, and tracks, including portacabins and storage sheds, with car parking areas beside the access track used by about 10 cars, at the time of my visit”.*

Importantly, as the Reporter noted, *“there was no planning permission in place for the shore base. The council were not in a position to form a view on the lawfulness or otherwise of the shore base uses or development. The council observed that if they were approached with an application for planning permission for such a facility their practice would be to require a separate planning application for any new shore base for a new fish farm operation, rather than regarding a shore base as ancillary to fish farming”*.

That is indeed what the Council should now require from Dawnfresh as no current planning permission exists for the shorebase. The current and recently-intensified shorebase operation, which includes the use of shoreline as being considered in this application, should now be regularised by way of a full retrospective planning application, with environmental impact assessment process, covering the whole shorebase / shoreline operation as a single unit.

That would allow the wider Etive community to comment upon the recent marked increase in the applicant's activities at Inverawe, which they have not been able to do in any formal process. To date, neither the development at the shorebase, nor the use of the shoreline have been subject to consideration or proper environmental impact assessment against the relevant planning policies of the Council, including the Loch Etive Integrated Coastal Zone Management Plan.

Dawnfresh has, however, chosen only to apply formally for planning permission for use of the shoreline, for storage of unused fish farm equipment including cages, which is at odds with its previously-argued position that such use of the shoreline was merely ancillary to the use of the shorebase.

Planning Policy and Guidance

Scottish Planning Policy is clear, at para 253, in relation to aquaculture-related planning applications, that *“any land-based facilities required for the proposal should, where possible, be considered at the same time”* as fish farm applications. Patently, that has not happened in relation to any of the Dawnfresh farms on Loch Etive that are served from the Inverawe shorebase, and that also make sporadic use of the shoreline, which is the subject of this application.

What this means in practice is that the land-based facilities and activity at both the shorebase and the shoreline at Inverawe have never been properly assessed against Planning Policy.

Of particular relevance to this application is Argyll and Bute Council Local Development Plan Policy LDP STRAT 1 - Sustainable Development - requires that development should “*respect the landscape character of an area and the setting and character of settlements*”.

In relation to Policy LDP 4 – Supporting the Sustainable Development of our Coastal Zone - the Council states, at 3.5.2 that Argyll’s “*extensive and varied coastline is of national, and in some parts international significance, containing many areas of special landscape and ecological significance. It is therefore important that the character and environmental qualities of the Argyll and Bute coast are protected from inappropriate development...*”

The Loch Etive ICZM Plan confirms that in the relevant Policy Zone of Loch Etive, the entire coastline, which includes the application site, is classified as Sensitive Countryside and the coastal hinterland adjacent to this policy zone is part of the North Argyll Area of Panoramic Quality. The Council’s Local Development Plan Supplementary Guidance, at para 1.1.1, notes that “*the Council has identified Areas of Panoramic Quality....These APQs are important not only for their physical landforms and scenic value, but also for the environmental assets that they represent. These qualities could easily be destroyed or damaged by even a relatively small, insensitive development. They therefore must be protected*”.

SG LDP ENV 13 then states that the “*Argyll and Bute Council will resist development in, or affecting, an Area of Panoramic Quality where its scale, location or design will have a significant adverse impact on the character of the landscape unless it is adequately demonstrated that:*

(A) Any significant adverse effects on the landscape quality for which the area has been designated are clearly outweighed by social, economic or environmental benefits of community wide importance;

In all cases the highest standards, in terms of location, siting, design, landscaping, boundary treatment and materials, and detailing will be required within Areas of Panoramic Quality”.

Therefore, to be granted permission, the applicant must be able to demonstrate that the negative impacts upon landscape of the proposed storage of equipment on the shoreline is

clearly outweighed by social, economic or environmental benefits of community wide importance, which the application submitted falls very far short of achieving.

The applicant has, at most, showed that the proposed use of the Inverawe shoreline would be convenient for its operations, but that is very far from constituting social, economic or environmental benefits of community wide importance.

The Council should therefore refuse the application.

Yours sincerely

Guy Linley-Adams
Solicitor