



Case reference	NA-EDS-021
Application details	Siting of modular building for Class 10 nursery
Site address	Milngavie and Bearsden Sports Club, Auchenhowie Road, Milngavie
Applicant	Mr Ian Scott
Determining Authority	East Dunbartonshire Council
Local Authority Area	
Reason(s) for notification	Category 2 (Objection by Government Agency) (SEPA)
Representations	NIL
Date notified to Ministers	4 June 2019 but not fully documented until 5 June 2019
Date of recommendation	26 June 2019
Decision / recommendation	Clear

Description of Proposal and Site:

- This application (council reference TP/ED/18/0347) seeks planning permission for the siting of a modular building for use as a children's nursery. The proposed use falls within Class 10 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 which covers various non-residential institutions including crèches and day nurseries.
- The temporary modular building is proposed on an existing car parking area to the front of the Milngavie and Bearsden Sports Club. It would be used as children's nursery accommodation in association with an existing nursery that operates from a function hall within the sports club. The application site is located adjacent to a watercourse - the Allander Water.
- It is understood that the modular building had already been partially installed on the site by the time the Council was minded to approve the application.

EIA Development:

- The proposal could be regarded as an 'urban development project' in terms of the relevant EIA Regulations, but the site is below the screening threshold of 0.5ha and is not located within a sensitive area. Therefore the proposal does not need to be the subject of an EIA screening opinion.

Consultations and Representations:

- Following the submission of a flood risk assessment (FRA) and other information, SEPA objects in principle to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy (SPP). SEPA advises that a children's nursery is categorised as 'most vulnerable' in terms of their Land Use Vulnerability Guidance. Given its location within the 1 in 1,000 year flood extent of the Allander Water, SEPA does not consider that it meets the requirements of SPP. SEPA's further advice is discussed below.
- The Scottish Government Flood Risk Management Team does not recommend call-in in this case, as they consider that on the basis of its temporary nature, the development does not raise any issues of national importance. Their advice is detailed further below.

Assessment:

1. As SEPA objects to the proposed development on flood risk grounds, this application has been notified to Scottish Ministers to ascertain whether there are any issues of national importance to warrant them calling in the application for their own determination.

2. There is an embankment on the left bank of Allander Water, between the watercourse and the application site. The embankment is not part of a formal flood protection scheme. The submitted flood risk assessment indicates that, taking this embankment into account, the site is not at risk of flooding during the 1 in 200 and 1 in 1,000 year flood events. In the absence of the embankment, the site would be inundated, and the finished floor level of the building is below the 1 in 200 and 1 in 1,000 year modelled flood levels.

3. The applicant's consulting engineers (Fairhurst) have assessed the effectiveness of the embankment in protecting the proposed development against flooding. Their report states that the embankment crest is elevated above the modelled 200 year and 1,000 year water levels, and concludes that it is very unlikely that the embankment would fail or be overtopped by water from the watercourse, during the assumed 5 year lifespan of the development. The report concludes that the embankment forms an effective defence against flooding of the site from the Allander Water.

4. However, SEPA advises that the proposal contravenes their published position in *Planning Information Note 4* which states that "developments that introduce most vulnerable uses are not considered to be acceptable behind a flood protection scheme. The consequences of any residual flood risk would be too significant for developments within this land use category". SEPA therefore objects in principle on flood risk grounds, regardless of whether or not the embankment is formally designated under flood risk management legislation or is considered geotechnically sound as a flood water retaining structure.

5. SEPA also notes that based on the modelled flood level (which does not take into account the informal embankment) the building platform is more than 1 metre below the minimum required finished floor level for flood mitigation purposes, and safe (dry) pedestrian access/egress cannot be achieved.

6. The Council's flood risk engineer shares SEPA's view and objects on similar grounds.

7. The Scottish Government's Flood Risk Management team is satisfied that sufficient evidence has been provided to confirm the suitability of the embankment for a temporary development of no more than 5 years, and does not recommend call-in. The team still has some concern regarding residual risk due to the vulnerability of the users; uncertainty around maintenance arrangements of the embankment; and access and egress arrangements. The team notes that it is probable their advice would be different if the proposed modular building were to become permanent. They emphasise that conditions should ensure that the building is temporary and require the implementation of the measures detailed in the submitted Flood Risk Management procedures document. These include the creation of a flood risk policy; installation of a water detection sensor on the grounds; and evacuation procedures. The council intends to impose conditions to this effect.

8. The Council's delegated report on the application notes that the use of the modular building would support the existing business operations on the site allowing an existing business to grow temporarily in the location whilst longer term options are explored. The report points to an increasing demand for, and difficulty in securing, nursery places within East Dunbartonshire. The Council considers that the proposal accords with the relevant policies of the adopted East Dunbartonshire Local Development Plan (LDP), other than that related to flood risk.

9. The delegated report acknowledges the proposed location within an identified flood risk area and states that the proposal is contrary to the LDP policy on flood risk. However, the submitted information gives the planning authority sufficient certainty that the site is not at flood risk. The Council believes that SEPA does not have the flexibility to take into account specific local conditions (such as the condition of the embankment) or other material considerations (such as the community benefits of the development). Having regard to key material considerations, the planning authority considers that planning permission should be granted, for a temporary period (five years from when the FRA was submitted) as the suitability of the embankment beyond this period as not been considered.

10. In light of the above information including the temporary nature of the permission, it is not considered that this proposal raises any issues of national importance to warrant intervention by Scottish Ministers.

Decision/Recommendation:

- It is recommended that this application be cleared back to East Dunbartonshire Council.