

Appeal Decision Notice

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Decision by Sinéad Lynch a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2100
- Site address: 50A Lochalsh Road, Inverness
- Appeal by David MacLean against the decision by The Highland Council
- Application for planning permission 13/02461/FUL dated 1 July 2013 refused by notice dated 6 November 2013
- The development proposed: Erection of house
- Application drawings : Plan 1 Location Plan, Plan 2 Rev A Block Plan, Plan 3 Ground Floor Plan, Plan 4 First Floor Plan all dated June 2013
- Date of site visit by Reporter: 8 and 9 March 2014

Date of appeal decision: 26 March 2014

Decision

I allow the appeal and grant planning permission subject to the 5 conditions listed at the end of the decision notice. Attention is drawn to the advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. The development plan for this area comprises the Highland-Wide Local Development Plan 2012 (HwLDP) and the Inverness Local Plan 2006 (ILP) (in so far as it remains in force).
3. Having regard to the provisions of the development plan, the main issues in this appeal are whether (a) the design and layout of the proposed dwelling would be acceptable and (b) the character and amenity of the area would be safeguarded, particularly in relation to residential on-street parking.
4. Policy 42: Previously used land of HwLDP states that *“The council will support development proposals that bring previously-used land back into beneficial use”*. Policy 28: Sustainable design of HwLDP also supports the use of brownfield sites. Scottish Planning Policy (2010) (SPP) is the Scottish Government’s policy on land-use planning. The document supports proposals that would bring vacant or derelict

land back into productive use. Paragraph 82 of SPP notes that, where designed appropriately, infill housing sites can make a useful contribution to the housing land supply.

5. I find that in principle, the proposed development is in accordance with the relevant provisions of the development plan and SPP, as it is a brownfield site being brought back into a productive use. The previous use of the site as a signwriting workshop and the fact that it is brownfield raises the potential of ground contamination. However, the evidence satisfies me that a planning condition requiring assessment and treatment of any contamination on site would be an adequate and appropriate safeguard.
6. Policy 28 of HwLDP also sets out criteria against which proposals will be assessed, the most relevant one to this appeal being *“impact on individual and community residential amenity.”* Policy 29 Design quality and place-making of HwLDP states *“The design and layout of new residential development proposals should focus on the quality of places and living environments for pedestrians rather than movement of vehicles, and should incorporate all of the six qualities of successful places.”*
7. The ILP contains Policy H: Housing, which safeguards the function and character of established residential areas and encourages appropriate development.
8. The site is located on Lochalsh Road, a residential street in Inverness. It is currently vacant and had previously housed a single storey building which had been used as a joinery and sign-writing workshop. The workshop has been demolished and the site is now cleared and surrounded by storm fencing. The site is generally orientated east to west and has a total site area of some 106.2 metres.
9. The development proposed consists of a two-bed dwelling of 1.75 storeys, with a hipped roof. The proposal includes a garden area, drying area and bin storage to the rear of the site, with the new dwelling fronting Lochalsh Road. There is no parking provided on site.
10. In terms of residential amenity, the proposed development would utilise garden ground from 29 Abban Street to create the garden to the rear of 50A Lochalsh Road. I am satisfied that both properties would have acceptable garden areas following the sub-division.
11. The objectors raised concerns regarding privacy and daylight. In relation to daylight, I am satisfied that the shadow cast by the proposed development would not give rise to an unacceptable or unexpected level of overshadowing or loss of sunlight to neighbouring, adjacent or nearby properties. In terms of privacy, the first floor windows would overlook Lochalsh Road and would have no impact on the privacy of any dwelling. The rooflights to the rear of the dwelling would not give rise to overlooking. The garden area of the proposed dwelling would immediately abut the garden of the lower flat at 29 Abban Street, but appropriate landscaping and

boundary treatment would ensure the minimisation of any impact and again, this could be secured by condition.

12. In relation to parking, the council assesses infill or redevelopment applications on their merits, and thus there is no parking standard to be applied to this site. The council agrees that in this instance the proposed development is in accordance with the development plan, but believes it was justified in refusing permission because the material consideration of the lack of provision of off-street parking outweighs development plan support.
13. Parking in the vicinity of the site is a mixture of off and on street, with 2 out of 3 of the immediately adjoining properties having off-street parking. Lochalsh Road does not have defined parking bays, rather parking is between the traffic calming build outs.
14. No evidence has been provided as to the number of parking spaces available on Lochalsh Road, nor any evidence of existing or projected future demand based on the proposed development. For example, I have not had any evidence on the number of parking offences documented on Lochalsh Road. As a result, the claims regarding existing and potential pressure for parking have not been substantiated.
15. The appellant has submitted an informal parking survey which they undertook over a 7 day period from 23 to 29 January 2014. That survey counted an average of 6 cars parked opposite the proposed site, between 39 and 55 Lochalsh Road.
16. I carried out an unaccompanied site visit on Saturday 8 and Sunday 9 March 2014. On Saturday, there were 7 available car spaces between 39 and 55 Lochalsh Road, on both sides of the street. On Sunday, there was a service at 11am at "St Michaels & All Angels Church" on Abban Street. I would expect this to be a time of peak demand for parking on this part of Lochalsh Road. At 11.15 am on Sunday 9 March, there were 4 parking spaces available for cars on that part of Lochalsh Road.
17. Despite the concerns raised by the council and the objectors, I find from my visit that there would more than likely be no impact on residential amenity through increased pressure arising from the proposed development for on-street parking in Lochalsh Road.
18. I have addressed the planning matters raised by the objectors in my reasoning above. A number of non-planning matters were also raised by the objectors, for example, potential impact on property values and the number of applications made on this site, amongst others. Because my remit is only to consider only the planning merits of the case, these non-planning matters cannot be material to my appeal decision.
19. Therefore, based on the above, I conclude that the proposal would comply with HwLDP policies 28, 29 and 42 from the development plan and it would follow the advice of SPP in bringing vacant or derelict land back into productive use. Further, there are no material considerations that would justify my taking a different view and

refusing planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

20. In granting permission, the conditions that I have imposed in the main take account of the appeal submissions and they reflect and consolidate those recommended by the council to make sure that they comply with the provisions of Scottish Government Circular 4/1998: The Use of Conditions in Planning Permissions. However, I have added additional safeguards for the residential amenity of the surrounding area and I have omitted conditions 1, 2 and 6 as proposed by the council because I consider that the requirements in them are capable of being addressed under separate legislation and licensing processes. On that basis, they would conflict with the advice in the circular. Likewise condition 9 as proposed has been omitted, because I am satisfied that it would be unnecessary given the size of the site as compared to the development footprint. The proposed condition would also be especially onerous for the developer and thus would not accord with paragraph 35 of Circular 4/1998.

Sinéad Lynch
Reporter

Conditions

1. Prior to the commencement of development details of all boundary enclosures shall be submitted to and approved in writing by the planning authority. The enclosures shall then be implemented as approved in writing by the planning authority.

Reason: To ensure the development is adequately screened.

2. No development shall commence until a fully detailed scheme of landscaping for the site, including a scheme of maintenance, has been submitted to and received the approval in writing of the planning authority. All planting thereby approved shall be undertaken in the first planting season following completion of the development and shall thereafter be maintained in accordance with the approved scheme. Any plants which, within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the immediately following planting season with others of a similar size and species.

Reason: To preserve the amenity of the surrounding area and to ensure that the development is adequately screened.

3. No development or work shall commence until full details, including specifications and samples, of the wall render colour have been submitted to, and approved in writing by, the planning authority. Thereafter, development and work shall progress in accordance with these approved details.

Reason: In the interests of visual amenity and to protect the character and appearance of the surrounding area.

4. No development shall commence until a scheme to deal with potential contamination within the application site has been submitted to, and approved in writing by, the planning authority. The scheme shall include:

- i. the nature, extent and type of contamination on site and identification of pollutant linkages and assessment of risk (i.e. a land contamination investigation and risk assessment in line with Planning Advice Note 33 and the BS10175:2001, or any superseding guidance prevailing at the time of the assessment), the scope and method of which shall be submitted to and approved in writing by with the planning authority;
- ii. the measures required to treat/remove contamination (remedial strategy) including a method statement, programme of works and proposed verification plan to ensure that the site is fit for the uses proposed;
- iii. measures to deal with contamination during construction works;
- iv. a means of monitoring any decontamination measures; and
- v. a means of verifying the completion of any decontamination measures that may arise.

Thereafter, no development shall commence until written confirmation that the scheme has been implemented, completed and, if required, monitoring measurements are in place, has been issued by the planning authority.

Reason: In order to ensure that the site is suitable for redevelopment given the nature of previous uses/processes on the site.

5. The hours of construction shall be restricted to between 08:00 and 17:00 Monday to Friday, 08:00 to 12:00 Saturday, and at no time during Sundays, unless otherwise agreed in writing by the planning authority.

Reason: to protect nearby residents from noise and disturbance.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period. (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)

4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.)

