

**THE HIGHLAND COUNCIL**

**SOUTH PLANNING APPLICATIONS COMMITTEE  
29 October 2013**

Agenda Item	5.1
Report No	PLS/050/13

**13/00420/PIP: Mrs Linda Gallagher  
Site 15m south of 5 Bath Street, Nairn**

**Report by Area Planning Manager - South**

**SUMMARY**

**Description :** Erection of house

**Recommendation - GRANT**

**Ward :** 19 Nairn

**Development category:** Local

**Pre-determination hearing:** Not required

**Reason referred to Committee:** Unresolved objection from statutory consultee.

**1. PROPOSED DEVELOPMENT**

- 1.1 Erection of a house on an area of land opposite 5 Bath Street. The application is for permission in principle so does not require details but is supported by an illustrative block plan showing an "approximate" house footprint and provision for 2 car parking spaces.
- 1.2 It is understood that informal pre-application advice (not through the Council's formal pre-application advice for local developments service) was sought in the Autumn of 2012 but the officer handling the case has now left the service of the Council and it is not clear if any response was given. Such advice is not mandatory for local developments.
- 1.3 Vehicle access to the site is via Bath Street. This is a vehicular cul-de-sac in the region of 4 metres width (varying along its length) with no footways. The area is served by public sewer and public water main though connections are of course at the discretion of Scottish Water.
- 1.4 In addition to the illustrative block plan the application is supported by a 1905 OS map and a supporting statement contending that on the basis of area character, other approved plots, the historic existence of a building on the site, and environmental benefit, a grant of planning permission for the proposed development would be justified.

- 1.5 **Variations:** Two variations have been made to the application plan. The first was when errors were noted in the plot areas stated on the application plans; the second incorporated details responding to a number of issues of concern raised in objections and consultations.

## 2. **SITE DESCRIPTION**

- 2.1 The site is a near-rectangular parcel of land on the south side of Bath Street, a vehicular cul-de-sac branching off the west side of King Street (the A96) between Claymore Gardens and Balvenie Place. It is surrounded on three sides by established houses; land to the north-west continues between Bath Street and properties on the north side of Claymore Gardens as house curtilages (some for Claymore Gardens houses, others for Bath Street houses). An area at the north-west corner of the site is fenced off from the remainder of the site, is open to Bath Street, and serves as parking space for the house opposite (No. 5).

## 3. **PLANNING HISTORY**

- 3.1 03/00061/OUTNA: Demolition of existing dwelling and erection of 2 dwellings OPP refused 2/6/03  
03/00116/OUTNA: Demolition of existing house and erection of new house OPP refused 29/9/03; appeal dismissed 14/6/04  
04/00051/FULNA: Demolition of existing dwelling and erection of new one and three quarters storey dwelling PP granted 28/9/04

## 4. **PUBLIC PARTICIPATION**

- 4.1 Advertised : Unknown neighbour. Advertisement expiry date 5 March 2013  
Representation deadline : 5 March 2013  
Timeous representations : 6 household + 2 households to re-notification  
Late representations : 0
- 4.2 Material considerations raised are summarised as follows:
- Loss of parking spaces for existing house
  - Increased volume of traffic on substandard road
  - Inconsistent with previous decisions and planning conditions
  - Precedents quoted by applicant irrelevant – different circumstances
  - Application incorrect – tree overhangs site
  - Any development higher than 1 storey would harm neighbours' amenity
  - 1 storey development dealing with outstanding concerns and retaining parking/turning for house opposite supported with suitable building methods
- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet [www.wam.highland.gov.uk/wam](http://www.wam.highland.gov.uk/wam). Access to computers can be made available via Planning and Development Service offices.

4.4 The application has been re-notified to neighbours and contributors on the two occasions when the application was varied. The first re-notification produced no responses but the second has resulted in 2 contributions expressing qualified support for development.

## **5. CONSULTATIONS**

5.1 **TECS (Roads):** No objection but question consistency with previous permission.

5.2 **TECS – Contaminated Land:** No objection but land contamination assessment required.

5.3 **Transport Scotland:** : Advise refusal.

## **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

### **6.1 Highland Wide Local Development Plan 2012**

28	Sustainable Design
29	Design Quality and Place-Making
31	Developer Contributions
34	Settlement Development Areas
42	Previously Used Land
56	Travel

### **6.2 Nairnshire Local Plan 2000**

S2	Housing
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## **7. OTHER MATERIAL CONSIDERATIONS**

### **7.1 Draft Development Plan**

Not applicable

### **7.2 Highland Council Supplementary Planning Policy Guidance**

Sustainable Design Guide

### **7.3 Scottish Government Planning Policy and Guidance**

Scottish Planning Policy (SPP)

## **8. PLANNING APPRAISAL**

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

### 8.3 **Development Plan Policy Assessment**

The site is situated within the built-up area of Nairn. HWLDP 34 offers general support for the principle of housing within settlements, while HWLDP 28's criteria on accessibility and location and HWLDP 56 favour the principle of development in this area. A key policy consideration is therefore whether the proposed development would fail any of the tests of these and of other policies to a degree which would point to refusal. This question, and the weight which can be given to material considerations, are discussed below.

### 8.4 **Material Considerations**

The applicant seeks further support in principle from HWLDP 42 citing an L-shaped building shown on the 1905 OS plan. However the boundary features (or lack thereof) on the map also suggest that this building was associated with the then curtilage of 57 King Street. One objector suggests that the building in question was a smithy and not a house, which if correct would be consistent with the Contaminated Land Unit's consultation response. Objectors claim that its use in living memory was as garden ground. Certainly at the time of the 2003 applications it was identified as part of the curtilage of the house opposite (5 Bath Street) and loss of that curtilage was one of the reasons for refusal of the 2 house application (03/00061/OUTNA). Nevertheless the issue is complicated by the fact that the 2004 permission, while imposing certain conditions affecting this site, did not restrict the developer's ability to dispose of the land separately from the house. One corner of the site has been kept available for use as parking and manoeuvring space for the residents of the replacement house at No. 5 on the north side of Bath Street, but the bulk of the site has been secured against entry and lies essentially unused, apart from odd occasions on which it has been used for vehicle parking not associated with 5 Bath Street. (A 2008 Google image shows a van and a builder's pick-up truck on the site).

The original illustrative layout did not take account of the parking space for 5 Bath Street. Nevertheless the layout suggested that – subject to a limited house footprint – it would be possible to satisfy the HWLDP 56 test of “appropriate parking provision” for the proposed house while leaving 5 Bath Street's parking unaffected. Whilst this raised issues of site layout, plot ratio, and relationship of building form to neighbours' amenity and the character of the area deriving from HWLDP 28, 29 and 34, the errors in describing plot areas actually work in the applicant's favour. The application site area is much greater than was originally depicted (460 sq. m instead of 280 sq. m).

In dismissing the appeal against refusal of planning permission 03/00116/OUTNA the Reporter judged that in character terms the site was not comparable to land on this side of Bath Street further to the north-west, where development has taken place in the past. However this was in the context of a proposal to put a house on this site and its parking on the north-east side of Bath Street thus creating a gap in the established line of buildings. Furthermore in rejecting the appellant's case the Reporter made reference to the adjacent land to the west (part of 6 Bath Street's curtilage). This land has recently had a large timber garage erected on it undermining the openness of this side of Bath Street.

Development of a house restricted in height so as to protect daylight and sunlight to the existing house at 5 Bath Street would ensure that there would be no impact on its residential amenity. Screening at ground level would protect 57 King Street's privacy. There is no evident risk of loss of amenity to any other adjoining property. Conversely the application offers the opportunity to secure improvements to the amenity of 5 Bath Street by reconnecting it to some of the curtilage it historically enjoyed, albeit less than it should have.

The application has attracted an objection from Transport Scotland. This was initially understood to relate to the fact that the ghost island in King Street has no marked area dedicated to traffic turning right into Bath Street from the east although the ghost island can be and is used for such manoeuvres by existing traffic. A more intractable point of concern is the fact that Bath Street is not 5.5 metres wide at the junction with King Street; thus, traffic turning into Bath Street from the west could not enter if another vehicle was emerging from Bath Street. Widening of Bath Street to 5.5 metres would be feasible on land controlled by the applicants (1 and 2 Bath Street) but that would have the effect of reducing those properties' curtilages to an unacceptable degree. As things stand it is possible to park cars within those curtilages clear of Bath Street but without much room to spare. The applicant has offered widening of Bath Street along the application site frontage to 5.5 metres which will offer vehicles space to pass each other within Bath Street. Other material considerations on this issue are the limited additional traffic which would be generated by one house in relation to the overall level of use of the Bath Street/King Street junction. 2 Bath Street itself has in recent years been used as office premises by an architectural/design practice (permission ref. 10/01367/FUL) evidently without any traffic issues.

On balance it is judged that the benefits of the scheme outweigh the demerits perceived by Transport Scotland. It would bring an area of derelict land back into use including partly rectifying its separation from the property which it historically served. It would make a positive contribution to the character of the area as one of tightly knit modest scale housing in an accessible location. It offers the community benefit of improved passing opportunities for traffic in Bath Street. The traffic impact on the King Street/Bath Street junction would be limited. On that basis it is recommended that members adopt the view that they are minded to grant planning permission in principle and refer the case to Scottish Ministers.

## 8.5 Other Considerations – not material

- Case officer should not have previous involvement in the site
- Retaining wall should be repaired to give adequate support to Douglas Street properties and deal with eyesore
- Construction should not involve piledriving
- History of non-compliance with conditions of previous permissions

## 8.6 Matters to be secured by Section 75 Agreement

A Section 75 Agreement to secure the free use of the additional curtilage for 5 Bath Street and its parking area (see submitted plan) by the occupiers of that property in all time coming.

## 9. CONCLUSION

- 9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## 10. RECOMMENDATION

<b>Action required before decision issued</b>	Yes
Notification to Scottish Ministers	Yes
Notification to Historic Scotland	No
Conclusion of Section 75 Agreement	Yes
Revocation of previous permission	No

**Subject to the above**, it is recommended the application be **Granted** subject to the following conditions and reasons:

1. No development shall commence until all of the matters specified below have been approved on application to the Planning Authority:
- a detailed layout of the site of the proposed development (including site levels as existing and proposed);
  - the design and external appearance of the proposed development;
  - landscaping proposals for the site of the proposed development (including boundary treatments);
  - details of access and parking arrangements; and
  - details of the proposed water supply and drainage arrangements.

**Reason** : Planning permission is granted in principle only and these specified matters must be approved prior to development commencing.

2. Any details pursuant to Condition 1 above shall show a development featuring the following elements:
- i. walls finished predominantly in a white/off-white wet-dash render/smooth coursed cement render/natural stone;
  - ii. a roof covering of natural slate;
  - iii. single storey in height;
  - iv. windows with a strong vertical emphasis;
  - iv. a roof symmetrically pitched of not less than 35° and not greater than 45°;
  - v. predominantly rectangular in shape with traditional gable ends;
  - vii. the building sited as close as practicable to the north-east boundary of the site with living room windows facing south-east and/or south-west;
  - viii. screening on the south-east boundary of the site to prevent overlooking of No. 57 King Street.

**Reason :** To ensure that the development makes most effective use of the space available around the house for its residents' amenity and makes a positive contribution to the visual quality of the area while avoiding loss of daylight, sunlight and amenity to existing properties.

3. Any details pursuant to condition 1 above shall show the carriageway of Bath Street widened to 5.5 metres along the entire frontage of the site of the house and of the adjoining land outlined in blue on the approved drawing. This widening shall be constructed in full prior to the commencement of construction of the house hereby approved and shall be designed and constructed in accordance with The Highland Council's Road Guidelines for New Developments standards.

**Reason :** In order to ensure the safety and free flow of traffic on Bath Street at all times including during the construction of the house.

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.

## **REASON FOR DECISION**

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

## **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION IN PRINCIPLE**

In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended), an application or applications for the approval of matters specified in conditions attached to this planning permission in principle must be made no later than whichever is the latest of the following:

- i. The expiration of THREE YEARS from the date on this decision notice;
- ii. The expiration of SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii. The expiration of SIX MONTHS from the date on which an appeal against such refusal was dismissed.

The development to which this planning permission in principle relates must commence no later than TWO YEARS from the date of the requisite approval of any matters specified in conditions (or, in the case of approval of different matters on different dates, from the date of the requisite approval for the last such matter being obtained)., whichever is the later. If development has not commenced within this period, then this planning permission in principle shall lapse.

## **FOOTNOTE TO APPLICANT**

### **Accordance with Approved Plans & Conditions**

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

### **Scottish Water**

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

### **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.



Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:  
<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationformsforroadoccupation.htm>

### **Mud & Debris on Road**

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

### **Construction Hours and Noise-Generating Activities**

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact [env.health@highland.gov.uk](mailto:env.health@highland.gov.uk) or more information.

Signature: Allan J Todd  
Designation: Area Planning Manager - South  
Author: A. McCracken  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 – Location Plan HHL 120014.P02d

## Appendix – Letters of Representation

Name	Address	Date Received	For/Against
Mr & Mrs Young	7 Bath Street, Nairn	27/2/13	Against
A & B Cameron	27 Douglas Street, Nairn	28/2/13	Against
R & J Main	6 Bath Street, Nairn	28/2/13	Against
K & L Ward	25 Douglas Street, Nairn	1/3/13	Against
K MacDonald	22 Claymore Gardens, Nairn	3/3/03	Against
Philip Edgar	23 Douglas Street, Nairn	28/2/13	For
A Cameron	27 Douglas Street, Nairn (re-notification)	2/9/13	For
Philip Edgar	23 Douglas Street, Nairn (re-notification)	7/9/13	For

