

Directorate for Planning and Environmental Appeals

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Ms Lyons
Highland Council
Sent By E-mail

Our ref: PPA-270-2107

25 September 2014

Dear Ms Lyons

PLANNING PERMISSION APPEAL: SOUTH AND WEST OF ROSE STREET INVERNESS

Please find attached a copy of the decision on this appeal and the claim for award of expenses decision.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action.

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Christine Brown

CHRISTINE BROWN
Case Officer
Directorate for Planning and Environmental Appeals



Appeal Decision Notice

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Decision by David Liddell, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2107
- Site address: South and West of Rose Street, Inverness
- Appeal by Inverness Properties Limited against the decision by The Highland Council
- Application for planning permission 13/04137/FUL dated 4 November 2013 refused by notice dated 30 April 2014
- The development proposed: Demolition Of Rose Street Hall & Decked Car Park & Phased Redevelopment To Provide Multi-Storey Student Accommodation, Shops, Food & Drink Premises, Public Space & Environmental Enhancement
- Date of site visit by Reporter: 28 August 2014

Date of appeal decision: 25 September 2014

Decision

I dismiss the appeal and refuse to grant planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. I must pay special attention to the preservation or enhancement of the character or appearance of the Inverness (Riverside) Conservation Area. I must also have special regard to the desirability of preserving the setting of listed buildings, in particular Inverness public library and the listed buildings on Academy Street closest to the appeal site.

2. The development plan in this case consists of the Highland Wide Local Development Plan (HWLDP) and certain elements of the 2006 Inverness Local Plan which for the time being remain in force. A number of items of supplementary guidance to HWLDP have been adopted by the council and these too form part of the development plan. Of these, of particular note are the Inverness City Vision and the Inverness City Centre Development Brief (ICCDB).

3. Having regard to the provisions of the development plan the main issues in this appeal are:



- The principle of the development, in particular the extent to which the proposal would help to deliver a student hub within Inverness and further the council's aspirations for the city centre;
- The quality and appropriateness of the proposals, including layout, design, scale, massing and public realm;
- Impacts on the townscape of Inverness;
- Impacts on built heritage;
- Transport impacts; and
- The economic, social and regeneration benefits of the proposal.

The principle of the development

4. Policy 3 of HWLDP supports development which would maintain and strengthen the viability and vitality of the city centre, and notes that supplementary guidance will be prepared to highlight specific opportunities for development. The council subsequently adopted ICCDB as supplementary guidance in March 2013.
5. The area East of Academy Street (one of five key districts identified in ICCDB and in which the appeal site is located) is stated to provide an ideal setting for the creation of a student hub, including accommodation and union. The map on page 20 of ICCDB shows a multi-storey business/student hub centred in and around the appeal site, and the longer term vision in the map on the following page shows, albeit in a different layout, student accommodation over much of the appeal site.
6. Although dating from 2006, Policy 1 City Centre Uses of the Inverness Local Plan seeks to strengthen the city centre as the focus for retail, commercial and business activity in the Highlands, and supports a mix of uses and the enhancing of viability and vitality.
7. Although not yet part of the development plan and still subject to change, the proposed Inner Moray Firth Local Development Plan (which will in time replace those elements of the 2006 local plan which remain in force) identifies the wider area in which the appeal site sits for a mix of business, retail, community and residential uses, including 100-120 student flats. Development is to be in accordance with ICCDB.
8. The council, in its appeal statement, has questioned the extent to which the proposal, containing just student accommodation and what would likely be commercially operated retail and service uses, constitutes a student 'hub' as envisaged in ICCDB. Other than accommodation and a student union (which does not form part of the proposal) ICCDB does not specify what else such a hub would contain. As the appellants point out, the ground floor uses could be occupied by operators providing services aimed at students. ICCDB identifies the wider area, not just the appeal site, as being ideal for a student hub, and the proposed development would, in my view, make it more likely that other student-related uses would emerge nearby. On the whole, I am satisfied that the proposal could make a very significant contribution towards the aspiration of a student hub in this part of the city.

9. In general terms, the proposal therefore draws considerable support from the current development plan and from the emerging Inner Moray Firth Local Development Plan. In this regard it is consistent with Policy 3 of HWLDP, Policy 1 City Centre Uses of the Inverness Local Plan, and with ICCDB. It would also be consistent with the Inverness City Vision, which sees the city centre as the 'central heart' of Inverness.

10. The appellants submitted a letter from representatives of the University of the Highlands and Islands (UHI) describing its likely future requirements for student accommodation. This letter, from October 2013, states that around 300 bed spaces, or possibly more, are likely to be required in Inverness by 2020. No decision had at that time been taken about the preferred location or locations for these, but both the city centre and the campus at Beechwood were thought likely to be appropriate locations. It was expected that the overall requirement could be 500 bed spaces or more in Inverness by 2025. The letter also stated that the university was conducting a procurement process designed to identify a preferred developer to undertake the development and provision of student accommodation across the whole of the UHI area. I have been supplied with no further information on this procurement process.

11. The proposal is, in essence, a speculative development which would aim to attract students studying with UHI or with other academic establishments. The appellants intend to deliver each phase of the proposal as and when sufficient demand exists. The council has criticised the quality of the interim treatment of the spaces between the buildings during the earlier phases. It would not wish to see the full completion of the civic space proposed within the site delayed by a protracted phasing of the whole development.

12. The proposal would, if fully developed, provide 274 student bed spaces. In addition to this, the appellants have an existing permission for a building on adjoining land with a further 105 bed spaces, making 379 in total. This existing permission, referred to as block B4 in the appeal documentation, is now proposed to be the fourth and final phase of development across the two sites, coming after the three buildings, blocks B1, B2 and B3, in the appeal proposal.

13. The evidence from UHI I refer to above does in my view does reveal significant uncertainty about the overall numbers of bed spaces required in Inverness, about when they will be required, and in particular about where and by whom they are likely to be provided. This notwithstanding, the overall proposition for 379 bed spaces across the two sites would exceed the stated likely UHI requirement, across the whole of Inverness, by 2020, and would constitute the majority of the likely requirement by 2025.

14. There is nothing wrong in principle with a speculative response to this potential opportunity, and I acknowledge also that UHI students need not be the only student occupants of the proposed development. However, when weighing the benefits of the proposal against its potential impacts, the extent to which the development is essential to meeting the requirements of UHI is in my view a material consideration.

The quality and appropriateness of the proposals

15. ICCDB envisages a multi-storey student hub, of which the development proposed would constitute a significant part. It anticipates such development taking advantage of views of the river, which would require a development at or near the height proposed. It also envisages the provision of civic space. It seeks a new bus link through the site connecting the bus station at Farraline Park to Rose Street, whilst in the longer term envisaging the bus station relocating to the railway station car park to the north east. I recognise that these aspirations in ICCDB relate to a wider area. However, the appeal site is at the core of this area, and the longer term plan on page 21 of ICCDB shows student accommodation only within the appeal site.

16. The council's view is that the scale, height, massing and design of the proposed buildings would combine to produce a proposal which represents over-development of the site, would not provide a sufficiently welcoming and usable civic space at its heart, and would have a significant negative impact on the townscape, skyline and built heritage of the city. I address these matters below.

17. I note that the maps on pages 20 and 21 of ICCDB envision two different configurations for civic space on the site, albeit I accept that these are not to be prescriptive. Neither configuration matches that of the appeal proposal. The map on page 20 shows such space centred along Rose Street, along the bus link through the site and on part of the car park which currently serves the retail units to the northwest of the site. Discounting the narrow area of the bus link, the remaining space would in such a layout appear to be significantly smaller than that shown in the appeal proposals, and with an irregular shape.

18. The civic space shown in the longer-term map on page 21 of ICCDB is focussed on the south-west of the site, again with an irregular shape. This space appears smaller than the civic space in the appeal proposal, and less well-connected. Farraline Park, the bus station having relocated in this longer term vision, is also shown as civic space. On the basis of its size and general configuration, I am therefore satisfied that the proposed civic space is an appropriate response to the indicative layouts envisaged in ICCDB.

19. The council is also concerned about proportions of the civic space in relation to the positions and heights of the three buildings proposed around it. This overdevelopment results, in the council's view, in an area of open space which is not sufficiently welcoming or usable, and is of diminished attractiveness

20. I acknowledge that the appellants revised the proposals to seek to address such concerns, including in response to the design review by PLACE, removing a storey from each of the blocks, and re-orientating and reducing the footprint of block B3. I also recognise that ICCDB anticipates multi-storey development in this part of the city centre, and that the site currently has in effect no usable civic space at all.

21. Despite the concerns of consultees, I am satisfied that the proposals accommodate usable civic space. However, for its size, it would have relatively tall buildings around it. These proportions would in my view somewhat affect its attractiveness and flexibility. Designing Streets states that 'the design of squares, both small and large, should respond

to the context of the place. A square will not be successful unless it is aligned with the potential activities of a place and the building forms.’ I am not persuaded by the appellants’ interpretation that recommended widths of squares can be inferred from the section through a square on page 25 of *Designing Streets*. In any event, and although it is clear from reading *Designing Streets* that the section is not intended to be prescriptive, the proportions of the square in that section indicate a space which is generally much broader, in relation to the height of the buildings which surround it, than that of the appeal proposal.

22. In this context, I do not consider that these constraints on the civic space, which in large measure result from the overall size and scale of the proposal, are justified. On balance, I consider that this renders the development contrary to the requirement in ICCDB that development is ‘of the highest quality’. I see no compelling case, on the basis of the uncertainty about UHI’s requirements and given the appellants’ existing consent for student accommodation, to relax that requirement.

23. I note the concerns raised by the council about the close proximity between blocks B1 and B2 and, respectively, the multi-storey car park to the northeast and the Spectrum Centre to the southeast. The rear flats on the lower floors of these buildings would look out over a service area towards a blank wall a short distance away. I agree that these flats would suffer a diminished level of amenity as a result, in particular those in B1. Given the nature and size of the site, however, and the council’s aspirations for the new civic space, it may be difficult to avoid such a relationship even with a less intensive development of the site. On balance, I conclude that the reduced level of amenity which these flats would enjoy would be acceptable, satisfying the requirements of Policy 28: Sustainable Design of HWLDP in this regard.

Impacts on townscape

24. The appeal site is well-contained on some boundaries. It is, however, relatively open at its boundary with Rose Street, and the removal of the car park and the arcade which connects it with the drill hall would open up views from Farraline Park. This context, and the height of the proposed buildings, means that the development would be prominent from some locations relatively close by. Longer views of the upper floors of the development are also likely.

25. The current ambience of Farraline Park is affected by its use as a busy bus station. This use, however, makes it a gateway to the city and an important part of the public realm. In the longer-term, ICCDB envisages Farraline Park becoming the main civic hub for the city.

26. Although I acknowledge that the proposal would remove the arcading between the drill hall and decked car park and provide a more welcoming pedestrian link through to Rose Street and Academy Street, I consider that the proposed development, in particular blocks B1 and B2, would give rise to adverse impacts on the square. The gable elevation of Block 1, facing directly on to Farraline Park, would appear, although stepped back, significantly higher than all the other buildings surrounding the square, including the multi-storey flatted development at Struthers Lane. Block 3, positioned directly behind the

Spectrum Centre, would have a similar impact. The buildings around Farraline Park are, with the exception of the library and the drill hall, relatively modern and somewhat mixed in scale and character. However, in my view the scale and massing of the proposal would appear significantly out of proportion with the surrounding townscape.

27. The prominence of the buildings would be compounded by the bulky roof treatments. In that respect, I agree with the views expressed by the council and at the PLACE design review that the pitched roofs with projecting gables on a modern development of this height and mass, notwithstanding that it has been reduced in height by one storey, would appear incongruous, and out of context.

28. Views of the site would be readily available from Rose Street and the retail units to the north-west of the site, and from Longman Road beyond. The proposal would bring new life to the site and improvements in public realm in and around Rose Street. However, as with Farraline Park, the combination of the height, massing and roof treatments would in my view produce a development which would be significantly out of scale with the surrounding built form, appearing overly prominent as a result. I acknowledge that there is consent for multi-storey student accommodation adjacent to the site – block B4. However, this is for a single building, with its narrower side elevation facing the site and flat roofs which would contrast with those of the appeal proposal.

29. The height of the proposed development is such that it would be prominent in views from Longman Road travelling southwest towards the roundabout which provides access to Rose Street, and when approaching this roundabout from the west. The buildings would appear significantly taller than the nearby retail units, the multi-storey car park to the north, and the buildings on Academy Street.

30. Views from this road towards the appeal site and its environs are generally undistinguished. However, viewpoints 5 and 8 in the Design and Access Statement illustrate the prominence of the development from this area and the difference in scale with the surrounding built forms, even acknowledging the existing consent for the relatively tall block B4.

31. Taking all of the above together, I consider that the impacts of the development on townscape would not be entirely consistent with the requirement in ICCDB for design of the highest quality which complements the surrounding area. Similarly, it would fail the requirement in Policy 28 of HWLDP to demonstrate high quality design in keeping with local character. Finally, I do not consider that it would make an appropriately positive contribution to the architectural and visual quality of this part of Inverness, so failing to comply with Policy 29: Design Quality and Placemaking of HWLDP.

Impacts on built heritage

32. The buildings on the north-east side of Academy Street, which form the edge of the Inverness (Riverside) Conservation Area at this point, contain the site to the southwest. Whilst there would likely be glimpsed, oblique views of the development from Academy Street itself, these would in my view be limited and minor. Views towards the conservation

area from the site itself and from Rose Street, looking towards the buildings on Academy Street, would be much changed by the development. At present this area has a largely untidy and unwelcoming appearance. The buildings on either side of Rose Street, both listed, present their rear, largely blank, elevations towards the site. The description of this area in ICCDB as 'ragged backlands' is apt.

33. The upper parts of the development would be seen in longer views from elsewhere within the conservation area, notably from Friars Bridge and along Huntly Street. I note that the council's conservation officer was not persuaded that the photomontages which were submitted in support of the planning application are an accurate representation. In the absence, however, of more detailed evidence from the council on this matter, and having viewed the site from these locations during my site visit, I have no compelling reason to disregard the material submitted.

34. The photomontages in the design and access statement, and in the appellants' Supplementary Visual Analysis, reveal that some of the upper floors, much of this roofscape, of the proposed development would be visible from Friars Bridge and from Huntly Street. It would appear directly behind or to the side of the Old High Church and Free North Church from several locations.

35. In my view there would be adverse impacts from some views on Huntly Street, in particular from the area in front of Balnain House. This is shown as View 1 in the Supplementary Visual Analysis. This is an important view on the riverside - looking back across to the Old High Church and Free North Church opposite. The photomontage shows the proposal significantly below the spires of the church, which would still punctuate the skyline to the same degree. The development would raise the skyline between the churches, and its upper floors and roofscape would occupy a significant proportion of the apparent distance between the two churches. I recognise the appellants' intent, in employing a series of darkly coloured pitched roofs, to integrate the roofscape of the development into the townscape. But in view of my findings above about the incongruous nature of such an approach in a modern building of this scale and height, I consider that the proposal would have an adverse impact on this view.

36. I have considered the impact of the development from other parts of the conservation area, including from the castle. Although accepting that there would be some degree of adverse impact on View 1, I am nevertheless satisfied that the proposal would, overall, preserve the character and appearance of the conservation area.

37. 92-94 Academy Street consists of two semi-detached 2 ½ storey (former) houses with pilastered entrances, a roughcast finish and slate roof. 96-104 Academy Street is a distinctive and handsome 3 storey building with ornate stonework and decoration. There is a pub on the ground floor, although the upper floors appear to be under-utilised. On the other side of Rose Street, 106-110 Academy Street is a 2 ½ storey building of stone and slate, also with a pub on the ground floor. All of these buildings are listed, and all have their rear elevations facing northeast, generally towards the site

38. The demolition and replacement of numbers 92-94 has been consented. The other two buildings have blank and untidy elevations facing the site. In this context, and given the current condition of the appeal site, the improvements to the public realm in Rose Street which the proposal could provide and its limited visibility from this part of Academy Street, I do not consider that the proposal would have an adverse impact on these listed buildings or their settings.

39. The Inverness public library, the former Farraline Park School, is an imposing single storey neoclassical stone building with a large central pediment supported by Doric columns. I understand that the square in front, now the bus station, was the former school playground, and it very obviously forms an important part of the building's setting. Whilst, as I have found above, the proposal would have an adverse impact on the character of the square, this would not, in my view, adversely affect the nature of the relationship between the square and the building to a significant degree. Historic Scotland noted the relationship of the proposed development to the library building, and does not object to the proposal. I am satisfied that the setting of the building would not be significantly affected.

40. Historic Scotland has noted that the loss of the drill hall has not been fully justified. Albeit it is unlisted, it is a distinctive stone building of solid proportions with mullioned windows and a strong crow-stepped gable facing Farraline Park, contributing to the character of the square. The drill hall is not specifically mentioned in ICCDB, although the indicative map on page 20 of the document identifies it as part of a 'new multi-storey business/student hub'. On this basis, I am satisfied that its loss could be justified in order to meet the various aspirations in ICCDB.

41. I am therefore satisfied that the proposals, insofar as their impacts on the conservation area and on listed buildings are concerned, comply with Policies 28 and 29 of HWLDP and with Policy 57: Natural, Built and Cultural Heritage, which states that development should not have an unacceptable impact on such features.

Transport impacts

42. The council's appeal statement states that the proposal has failed to make the most of the opportunity to improve pedestrian connections through the site, in particular from Farraline Park through to Rose Street and to Academy Street. However, the proposal would improve connectivity from Farraline Park by removing the arcading between the decked car park and the drill hall. Notwithstanding concerns about the quality and proportions of the proposed civic space, in my view it would provide a more welcoming and attractive environment than the current route past the dark lower level of the decked car park. The civic space would link to Academy Street via the new path to be created through the redevelopment of 92-94 Academy Street. I agree with the council that the proposed interim arrangements for this, in particular during Phase 1 where the link would be along a narrow path between parking spaces in a car park, would be acceptable only for a limited period. Ultimately, the proposal would provide an improved environment for pedestrians and cyclists at the southern end of Rose Street. The civic space would be free of traffic, an improvement on the layout on page 20 of ICCDB which shows civic space serving also as a bus route. Overall, and given the current configuration and use of the site, I am satisfied

that the proposal would significantly improve connectivity through the site for pedestrians and cyclists.

43. Although not cited specifically in the council's reasons for refusing this application, the council's appeal statement refers to the failure of the proposal to deliver a bus link between Farraline Park and Rose Street. Such a link is shown on the map on page 20 of ICCDB, running directly through the site.

44. In my view it would be difficult to accommodate such a link through the site whilst achieving a safe and pleasant environment for pedestrians and the kind of high quality civic space which the council wishes to see. Given also that the longer term aspiration to relocate the bus station would appear to make any such bus link redundant, I am satisfied that the lack of such a link would not be sufficient reason for dismissing this appeal.

45. I therefore conclude that the proposal is accessible by walking and cycling and in this respect consistent with Policy 28 of HWLDP.

The benefits of the proposal

46. I recognise that the development could make a very significant contribution towards the aspiration in ICCDB for a student hub, furthering the regeneration of this part of the city. There is no doubt that the development of UHI, with the Inverness campus at its heart, is a very important project for the Highlands, and is supported in the development plan. The development could also help maintain the vitality and viability of the city centre, by breathing new life into a generally underutilised and unwelcoming site, bringing significant amounts of new residents into the city centre, and creating new retail and other commercial floorspace. These benefits could be significant.

47. I readily acknowledge all of the above, and the difficult balancing exercise which council officials were required to make and which led them to recommend approval of the development. However, on balance, I do not consider that these benefits outweigh the adverse impacts I have identified above.

Conclusion

48. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

49. I have considered all the other matters raised, including the contribution which the development would make to sustainable development, but there are none which would lead me to alter my conclusions.

David Liddell

Reporter

Decision by David Liddell, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2107
- Site address: South and West of Rose Street, Inverness
- Claim for expenses by Inverness Properties Limited against The Highland Council

Date of decision: 25 September 2014

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. Scottish Government Circular 6/1990 contains advice on the Scottish Ministers' use of their power to award expenses in planning appeals. The Circular states that certain conditions will normally require to be met before an award of expenses will be made.
2. The conditions that must be met for expenses to be awarded against a party are that:-
 - the claim was made at the appropriate stage of the proceedings;
 - the party against whom the claim is made has acted unreasonably;
 - that unreasonable conduct has caused the other party unnecessary expense, either because it should not have been necessary for the case to come before the Ministers for determination, or because of the manner in which the party against whom the claim is made has conducted their part of the proceedings.
3. The claim for expenses was made by the appellants shortly after they received the council's appeal submission, and therefore at an appropriate stage in the proceedings.
4. The appellants' first two reason for claiming an award of expenses each allege two failings: that the council has not adequately supported its reasons for refusing this application; and that in addition the council's appeal statement founds on matters that are not amongst its reasons for refusal.

5. In relation to the first allegation, the appellants are correct to point out that the council has not, on the whole, provided a detailed riposte to the appellants' in-depth statement and the evidence which was submitted in support of it. Whilst to do so may be helpful to a Reporter, it is not incumbent on the council. The council's appeal statement amplifies its reasons for refusal with reference to the development plan, the views of consultees and other material considerations. It does in my view constitute adequate support for the reasons for refusal. In this regard, the council has not acted unreasonably.
6. In relation to the second allegation, the council's statement does list concerns which were not directly specified in its reasons for refusal, for example the lack of provision for a bus link between Farraline Park and Rose Street. But for the most part these were matters which were raised either before the application was submitted or during its processing, including at the committee meeting. In view of the references in the reasons for refusal to the scale and design of the proposal, and to 'over-development', I do not consider it unreasonable for the council to have covered these concerns in its statement.
7. The appellants' final reason for claiming an award of expenses is that the council has introduced the new Scottish Planning Policy (SPP) at a late stage in the proceedings, not having previously relied on the consultation version nor materially altering its position on the appeal in light of the final version.
8. The new SPP was published after the council determined this application, but the day before the appeal was received by DPEA. In these circumstances it is entirely reasonable for the council to address the new SPP, which is capable of being an important material consideration, in its appeal statement. That the council did not make reference to the consultation version (to which significantly less weight could be attached) in its earlier handling of the application does not alter this. In this case the new SPP did not affect the outcome of the appeal, but that does not make the council's anticipation that it may do so unreasonable.
9. I do not find that the council has acted unreasonably. I therefore decline to make any award.

David Liddell

Reporter