

Appeal Decision Notice

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Decision by Frances McChlery, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2012
- Site address: Clisham, 71 Culduthel Road, Inverness IV2 4HH
- Appeal by Mr Robert Grant against the enforcement notice dated 14 January 2015 served by The Highland Council
- The alleged breach of planning control: Building of extension not in accordance with Condition 1, or approved plans, of planning permission 07/00695/FULIN
- Date of site visit by Reporter: 29 April 2015

Date of appeal decision: 27 May 2015

Decision

I dismiss the appeal and direct that the enforcement notice dated 14 January 2015 be upheld. Subject to any application to the Court of Session, the enforcement notice as amended takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Town and Country Planning (Scotland) Act 1997 as amended ('the Act').

Reasoning

1. The appeal against the enforcement notice was made solely on the ground (f) provided for by section 130(1) of the Act, namely, that the steps required by the enforcement notice exceed what is necessary to remedy any breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach. In this case the second strand of ground (f) does not come into play, because the council has decided that the only remedy is to bring the development into compliance with the planning permission which has been granted, and that no lesser remedy or works would be acceptable. The only question before me is whether the enforcement notice requires more than is necessary to remedy the breach of planning control.

2. The council has based the enforcement notice on compliance with planning permission reference 07/00695/FULIN, pointing out that this permission was granted after an earlier application for an unacceptable proposal to extend the building was withdrawn because it was deemed unlikely to succeed, and after detailed discussions with the applicant.



INVESTOR IN PEOPLE



3. The planning permission permits an extension to the house known as Clisham, which is part of the group of buildings known collectively as 71 Culduthel Road, clustered round a large Victorian institutional building which was the former Highland Orphanage, opened in 1887. The main orphanage building is now in residential use and several houses of varying styles, other than Clisham, have been built, or adapted from outbuildings, around it in what would once have been its grounds. The house Clisham appears on the 1904 OS map of the site as the orphanage schoolhouse and is the only additional building shown within the orphanage grounds at that time. In considering the application 07/00695/FULIN the council took pains to arrive at an acceptable design for the extension of Clisham. They had regard to the history of the building and its surroundings, while bearing in mind that neither Clisham nor the former orphanage building is listed building, nor in a conservation area. They also applied council development management policies designed to provide for compatible extensions of traditional buildings in a manner which respects the original character and does not overwhelm it.

4. Condition 1 of Permission 07/00695/FULIN required that the development be carried out strictly in accordance with the approved and docquetted plans unless the prior written consent of the planning authority had been obtained. The approved and docquetted drawing reference 0107.1298.102D shows an extension to the existing roof line without change of height. The fenestration approved for the south west elevation of the extension on the ground floor was to be a central door into the narrow back garden, flanked with windows with vertical pane patterns. The extension was to have a half height upper floor with a large dormer window, with six vertical emphasis panes. The north east elevation windows were also to have vertical panes.

5. However, the work to extend Clisham which has been carried out does not comply with the approved drawing. The appellant acknowledges this. The council has supplied photographs and I was able to inspect the house both from the adjacent amenity ground to the south east and from the drive of the main former orphanage building. This is a private access road serving several properties and the appellant had given permission for me to use the road for this purpose. The differences between the approved drawings and the works which has taken place are:-

- The roof ridge has been constructed about 10-20 centimetres higher than the existing roof. A deep wooden fascia board under the roof overhang has been installed on the extension which does not appear on the drawings, and which is not a feature of the former building.
- On the north east elevation, facing into the grounds of the main former orphanage building, a back door and two windows have been installed more or less in the approved positions, but these are plain white UVPC sealed units without any vertical pane design elements.
- The approved drawings have three roof light windows on the north east roof slope, but only two have been constructed, and on the north west gable a small window has been inserted, where none is shown in the drawings. Taken together

these suggest change from the approved internal layout, but I have no further information on this except to note that the internal use of the building as a single dwelling, and the link between the two buildings was also subject to planning conditions.

- On the south west elevation the approved drawings show a central glazed door with half height windows on either side at ground floor level. These were shown as having vertical panes. In fact, only a central UVPC French window has been installed with two large single door panes with no vertical emphasis, and one separate side UVPC framed window with a single pane and no vertical emphasis.
- At first floor level on the south west elevation, instead of the dormer window with six vertical panes there is a large two paned French window, above the one at ground floor level, again with no vertical pane design element. It is unclear what if any balcony detail might be installed with this. This is placed in the centre of the dormer extension of the roof, departing from the proportions and design as approved. A deep wooden fascia has been installed beneath the roof eaves which does not appear on the approved drawings.

6. I find that the works which have been carried out do not conform to condition 1 of planning permission 07/00695/FULIN, and that a breach of planning control has taken place.

7. Section 4 of the enforcement notice requires the following works to be done:-

- Remove the unauthorised roof structure, windows/window openings and the fascia on the front and rear eaves of the extension;
- Construct and complete the roof of the extension in full accordance with approved drawing ref. 0107.1298.102.D of planning permission ref. 07/00695/FULIN; and
- Form window openings and install replacement windows in full accordance with approved drawing ref. 0107.1298.102.D of planning permission ref. 07/00695/FULIN.

I agree with the council that these works are the minimum necessary to rectify the breach of planning control.

8. The appellant accepts that the extension as built is not as consented, explaining that the extension roof and ridge is higher than the existing dwelling “*to rectify either a design fault by the architect in his specification and plans submitted to the roof truss manufacturer, or an error in the manufacture by said roof truss company.*” I do not consider that an error by either a building professional or a supplier is sufficient reason to override the breach of condition.

9. He further submits that the extension as built is in keeping with the area and has a similar roof line to the flats to the south of the extension, and roofs on other buildings in the area, and is also in keeping with some of the stepped roofs of the main building at 71

Culduthel Road. He has supplied photographs of examples of stepped roof lines on various nearby buildings and of the complex roof pattern of the main Victorian building. I was able to consider these examples during my site visit. I do not agree that leaving in place the present change in roof ridge heights and deep fascia board would lead to an acceptable design in planning terms. The proper frame of reference is the existing building, and the work which has been done to it is not comparable the photographic examples relied on by the appellant, which largely show designed solutions to a change in level, or aspects of considered building design. The extension roof line is simply too high: it looks like the mistake which the appellant admits it is.

10. As regards the lack of vertical emphasis in the design of the extension windows, the appellant says that they are similar to windows fitted to the surrounding existing buildings many of which do not have a vertical emphasis. Again the proper frame of reference is a window design which is in keeping with the original building. I note that the windows of the existing building may have themselves been changed to UPVC units- some of which have a more traditional pane pattern. I am not aware of whether these changes may be susceptible to planning control, and in any event this does not form any part of the enforcement action. They are however a retrograde step in planning terms and I consider that the council were right in trying to reflect the proportions and window patterns of a more traditional flavour by seeking at the least a vertical emphasis in the window pane pattern, and fenestration generally, of the extension. I consider that the non compliance in the window location and design with the approved drawings is part of the breach of planning control.

11. The appellant also submits that the extension as built is more sympathetic to the area unlike the most recent buildings on the orphanage site, such as the next door detached dwelling, which is totally out of keeping with the surrounding buildings. I agree that the buildings around the original orphanage building are of a variety of types and styles, not all of which are wholly sympathetic to the Victorian main building. However, less successful planning decisions should not be used as a reason to compromise good development management design standards based on current development plan policy, with the objective of good placemaking. In addition, I consider that the council were right to consider the extension plans for Clisham with a view to maintaining a traditional appearance in form and in detail given that this would be a modification to one of the original buildings on the site.

12. I have considered all other matters raised, but do not consider that they would lead me to a different conclusion. I do not consider that the works required by the council in the enforcement notice exceed those which are necessary to remedy the breach of planning control and therefore conclude that the appeal based on ground (f) of section 130(1) fails.

Frances M McChlery

Reporter