

Directorate for Planning and Environmental Appeals

Telephone: 01324 696453 Fax: 01324 696444
E-mail: Christopher.Kennedy@scot.gov.uk

Ms K Lyons
Highland Council
Sent By E-mail



Our ref: PPA-270-2125

26 August 2015

Dear Ms Lyons

PLANNING PERMISSION APPEAL: 14 FOUNTAIN SQUARE HASTER WICK KW1 5SX

Please find attached a copy of the decision on this appeal.

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

Christopher Kennedy

CHRISTOPHER KENNEDY
Case Officer
Directorate for Planning and Environmental Appeals



Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Claire Milne, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2125
- Site address: 14 Fountain Square, Haster, Wick, KW1 5SX
- Appeal by Donald Connor against the decision by Highland Council
- Application for planning permission reference 14/04307/FUL dated 8 January 2015 refused by notice dated 2 April 2015
- The development proposed: Erection of 3 sheds (retrospective)
- Application drawings: location plan, site layout plan DRG.01, and photographs of sheds
- Date of site visit by Reporter: 10 August 2015

Date of appeal decision: 26 August 2015

Decision

I allow the appeal and grant planning permission subject to the condition listed below.

Condition

1. Planning permission is hereby granted for a temporary period only and shall cease to have effect one year from the date of this decision. At the end of this period, the 3 sheds shall be removed and the garden area reinstated.

Reason: In order to give the appellant a reasonable time period in which to find acceptable alternative storage and charging arrangements within the curtilage and to ensure any adverse visual impact is removed.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are the impact of the development on the character and amenity of the area. I also consider there to be issues relating to the Equality Act 2010.

Development Plan

2. The development plan is the Highland Wide Local Development Plan 2012 and the Caithness Local Plan 2002. No policies of the Caithness Local Plan have been drawn to my attention.

3. The appeal site is part of the curtilage to the semi-detached dwelling at 14 Fountain Square which is located in the small community of Haster. Haster is located approximately 4 kilometres from Wick where the majority of essential services and facilities are to be found. Haster itself comprises of a group of around 50 semi-detached dwellings with separate garage court areas and the gardens are characterised with a number of domestic outbuildings. The appeal site is located immediately to the north of the dwelling and is currently occupied by 3 outbuildings (sheds) the subject of this appeal.

4. At the site visit I observed a number of other outbuildings which are located within the garden area of the dwelling. These are of varying materials, sizes and styles:

- Immediately to the west of the dwelling are 3 plastic pitched roof sheds each of which measure around 2.5 square metres. These were granted planning permission in August 2013 (reference 13/02842/FUL), with all permitted development rights in the curtilage removed. In between these 3 plastic sheds are 2 further lower level plastic storage containers.
- To the north east of the dwelling is a bin storage area and 3 plastic coal bunkers.
- A further timber outbuilding is located to the east (rear) of the dwelling and measures approximately 4.8 square metres and beyond this is an oil storage tank which serves the property.

5. The relevant policies drawn to my attention from the Highland Wide Local Development Plan are Policy 28 Sustainable Design, Policy 29 Design Quality and Place-making and Policy 36 Development in the Wider Countryside. The general aims of these policies, which apply to all developments including the erection of 3 sheds, is to ensure development demonstrates sensitive siting and high quality design in keeping with local characteristics, and is visually acceptable and sympathetic to existing patterns of development in the area. Policy 28 is supported by statutory supplementary guidance Sustainable Design Guide January 2013 which describes good design in general terms, as a building that is fit for purpose and respecting both its location and function. The needs of disabled people also require to be assessed and ensuring people of all abilities are able to move safely and conveniently to facilities in other parts of the settlement. Policy 66 Surface Water Drainage is also cited but I do not find this to be particular relevant given the overall scale of the development.

6. The 3 sheds the subject of this appeal are located immediately adjacent to each other and are of varying materials, shapes and sizes as follows:

- The largest shed located furthest west and closest to the footpath, is a total 6.9 metres long and located 1.25 metres from the edge of the footpath. It is made of timber and has a total footprint of approximately 22 square metres. It has 3 doorways, one on the west elevation to gain access directly from the footpath via a ramp, and 2 on the east, and contains 2 windows in the north elevation. On the site visit I observed that this shed is equipped with electricity and lighting and used for the storage of household and garage type items along with an electric bicycle, 2 mobility scooters and a moped.

- The second shed (middle) is also made of timber with a pitched roof and has a footprint of 4.6 square metres. It has one doorway and it was evident from the site visit that this shed is used primarily for the storage of household items.
- The third shed is of metal construction with a pitched roof and sliding door and is used for the storage of car tyres and household fuel.
- None of the 3 sheds exceed 3 metres in height and all are visible, to a greater and lesser extent, from the public footpath and main road of Fountain Square.

7. In assessing the impact of the 3 sheds in terms of the development plan, it is appropriate to consider them in the context of the existing characteristics of the property, the wider character of Fountain Square and the residential community of Haster itself.

8. The materials and design of the sheds themselves is typical of garden outbuildings which reflects their intended purpose which is the storage of garage and household items. I saw similar examples of these in other gardens within Haster. I do not find therefore that each individual shed's materials or design is out of character with the local area. However the key difference between these outbuildings and those situated in gardens elsewhere, is that they are grouped in one location. This is in contrast to the more dispersed positioning of such outbuildings within other gardens in Haster.

9. The dwelling house at 14 Fountain Square is relatively small and single storey. The plot is unusually shaped and the extent of outbuildings surrounding the dwelling occupies most of the available outside space. When viewed in conjunction with the existing sheds and other outbuildings in the curtilage, the 3 sheds visually dominate the garden and dwelling house, and they leave very little space for other outside activities.

10. As the 3 sheds are a variety of shapes, orientation, materials and sizes, this contributes to their cluttered appearance when the development is viewed from surrounding properties. The shed closest to the footpath is highly visible from the main public viewpoint of Fountain Square, and due to its overall massing and width, dominates the street frontage. When viewed cumulatively with the 3 existing plastic sheds on the frontage, the extent of built development at the appeal site is not sympathetic to the character of this residential area.

11. I accept the council's argument that the 3 sheds the subject of this appeal contribute to an over-developed site. I do not consider the sheds to be consistent with the existing pattern of development in the area or to make a positive contribution to the quality of place, and therefore find the development contrary to the development plan.

Material Considerations

Equality Act

12. In his appeal submissions, the appellant claims that he is elderly and along with the other resident in the property, registered disabled. From the information submitted I am satisfied that the appellant is elderly and both residents are disabled. The appellant asserts

that there is a lack of space in the dwelling to store and charge their essential mobility aids, and the 3 sheds are needed (it is assumed on a permanent basis) to accommodate this.

13. Section 149(7) provides that “age” and “disability” are “relevant protected characteristics” under section 149(1) of the Equality Act 2010. The Act places a duty on me in determining this appeal to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. My interpretation of the need to have ‘due regard’ is to ‘give priority’ to the circumstances displayed by those with protected characteristics. My duty under the Act requires that I take these personal circumstances into account and consider whether to address them as a material consideration. The appellant’s particular circumstances, specifically his age and disability, and the other resident’s disability, affects their mobility so as to be relevant and a material consideration in relation to this appeal.

14. The key consideration for this appeal is whether the visual harm caused by the siting and design of the sheds, relative to the development plan policies in force, is outweighed by the residents’ needs.

15. It was obvious to me from the site visit that all 3 sheds are not being used solely to support the residents’ particular circumstances and are in more general use. However I consider the ability to store and charge mobility aids external to the dwelling to be necessary in order to support the residents’ particular needs and enable them to access recreational, health care and other services, many of which are located within Wick. I therefore give significant weight to this as a material consideration.

16. The permanent or temporary need for the sheds is also relevant given their recognised visual harm and the personal circumstances of the residents. I do not find their particular needs to be sufficient to allow the sheds on a permanent basis as it seems likely that an alternative arrangement which meets their needs and is visually acceptable could be found. I therefore conclude, for the reasons set out above, that the proposed development does not accord with the relevant provisions of the development plan. However I consider there are material considerations which would justify granting planning permission on a temporary basis for 1 year which I have covered through the introduction of a planning condition.

Conditions

17. The council recommends two planning conditions should I be minded to allow the appeal which I have assessed against Circular 4/1998. Given the residents’ protected characteristics, the conditions imposed also need to be reflective of their particular needs.

18. I have carefully considered the first condition which requires the number of sheds to be rationalised within the curtilage subject to the approval of the planning authority. I consider the 3 year timescale for this to be achieved is too long as it would prolong the adverse visual impact on the local area. The condition is also imprecise and unenforceable for the following reasons:

- It does not deal with the potential outcome that agreement cannot be reached with the appellant;
- It is not clear what physical outcome is intended i.e. which sheds might remain and which might be removed; and
- It does not specify that the appellant is to actually implement the approved scheme.

19. I have chosen therefore not to include this condition but to restrict the permission to just 1 year which provides an appropriate balance between removing the visual harm whilst giving the residents a reasonable timescale to find an acceptable alternative arrangement.

20. In addition, I understand permitted development rights have already been removed within the curtilage and therefore I find the council's second condition to be unnecessary.

Conclusion

21. I therefore conclude, for the reasons set out above, that while the proposed development does not accord with the relevant provisions of the development plan, granting planning permission on a temporary basis is justified by the need to have due regard to the duties imposed in the Equality Act 2010 which I have given significant weight to as a material consideration in this instance.

Claire Milne

Reporter