

## Appeal Decision Notice

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Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2148
- Site address: Ho Ho/Highlander Hostel, 23A High Street, Inverness, IV1 1HY
- Appeal by Mr Ali Mohamed against the decision by Highland Council
- Application for planning permission (15/02631/FUL) dated 27 November 2015 refused by notice dated 18 December 2015
- The development proposed: change of use to House in Multiple Occupation (HMO) with ancillary use as a Hostel
- Application drawing: No.2015/GA/2/01B
- Date of site visit by Reporter: 26 April 2016

Date of appeal decision: 23 May 2016

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### Decision

I allow the appeal and grant planning permission for a change of use to a House in Multiple Occupation with ancillary use as a Hostel, subject to the 6 conditions listed at the end of the decision notice. Attention is drawn to the 3 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. Having regard to the provisions of the development plan the main issue in this appeal is the effect of the proposed change of use on residential and business amenity in the High Street by reason of noise and disturbance.
2. I have a duty under section 14(2) of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural and historic interest which it possesses.
3. Adopted Policy HMO2 - HMO provision within Inverness City Centre - in the council's Houses in Multiple Occupation Supplementary Guidance (which includes policy 33 of the Highland-wide Local Development Plan) requires planning applications to be assessed against policy HMO3. To ensure that HMO provision does not have an adverse effect on the character and amenity of the city centre, the policy also requires the guideline to be reviewed if the concentration of HMO properties reaches 10% of all residential units in the city centre. Policy HMO3 - Assessing HMO Proposals - is the most relevant policy in this case, and sets out a range of criteria with which such proposals have to comply.

4. The appellant's property is a Category B listed, 4 storey former town house with shops on the ground floor that lies on the north side of High Street in Inverness City Centre. Access to the accommodation on the upper floors is through an archway that leads to pedestrianized Lombard Street to the rear where commercial uses on the west side face flats above shops opposite. Some of these flats gain access via a staircase (Stair 2) which also provides a fire escape for others, as well as a right of fire escape from the 1<sup>st</sup> Floor of the appellant's property.

5. The main entrance is on the west side of the archway where a hallway opens onto a grand staircase (Stair 1) that rises to the 2<sup>nd</sup> floor with a more basic stair up to the 3<sup>rd</sup> Floor. A new bin store for wheelie bins and recycling materials is to be formed at Ground Floor level in a fire-proofed cupboard under the main stair. The 1<sup>st</sup> Floor would have a reception area, a common room, kitchen, laundry, a 4 person room with separate shower-room and a small office, with access through to the Stair 2 fire escape from above and to below. The 2<sup>nd</sup> floor would have 2 x 4 person rooms (one with ensuite shower room), 2 x 3 persons rooms (one with ensuite shower room) and 1 x 2 person room, together with 3 x shower/WCs and a separate shower, plus access through to the Stair 2 fire escape. The 3<sup>rd</sup> floor would have 2 x 3 person rooms, 1 x 2 person room and 3 x 1 person rooms with 3 showers and 2 WCs and access to the Stair 2 fire escape. The application plan shows that these rooms would provide accommodation for up to 31 persons.

6. During my site inspection, which I carried out with the council's representative and appellant, it was apparent that he was in the process of carrying out extensive improvements to the rooms and facilities. The original layout of the building has been largely retained with few alterations, except where necessary to provide WCs and showers. Where rooms had previously been used as hostel bedrooms using bunk beds, they are now being prepared for fewer occupants as defined in paragraph 5 above. The new kitchen and laundry facilities on the 1<sup>st</sup> Floor should be more than adequate to serve the residents, while the common room would provide a useful communal amenity space for them to enjoy.

7. As far as I was able to ascertain, as a result of this work, the interior of the listed building would be restored but largely unchanged, while the lack of any external alterations would ensure that the building, its setting or any features of special architectural or historic interest which it possesses would be preserved.

#### *Main issue*

8. As a building providing a primary home for 6 or more unrelated people, the appellant's property would meet the definition of a HMO in the supplementary guidance. In the report of handling, the council accept that the concentration of HMOs in this Census Output Area, including the appeal premises, would amount to 6.9% of all the residential units in the city centre, which falls well within the recommended 10% threshold set out in policy HMO2. Although this suggests that there remains some capacity for this type of use, each application has still to be assessed on its own merits under policy HMO3. Paragraph 2.16 of the supplementary guidance states that there are also 3 Specialist HMOs for the homeless in the city centre contracted to the council and 1 used when required, but the appeal premises do not fall into that category.

9. The bunk beds I saw suggest that, when it was used as a hostel, many more people were in occupation in a more transient and difficult to control manner. Policy HMO3 will only support applications where it would avoid negative impact to traffic or pedestrian safety; it is close to public transport, social and community facilities; it will avoid negative impact on residential or business amenity, particularly with regard to noise and disturbance, and must provide refuse storage, garden ground and car or cycle parking and it will avoid materially altering the character of the area.

10. Although the property has previously been licensed as a HMO, which the council does not dispute, it has now to meet the policy criteria. Of these, the building lies on the principal pedestrianized shopping street in the City Centre where there is unlikely to be any conflict with traffic or pedestrian safety, while the report of handling accepts that in such a location parking provision would not be required. It lies in close proximity to public transport connections by bus and train, and social and community facilities are close by. Although there has been trouble in the past with noise and disturbance and inadequate refuse storage, the appellant would appear to have that under control with fewer residents in the new layout. There is no communal outdoor amenity space for the occupants to enjoy, but all the city's facilities and riverside are readily available. While there is no car or cycle parking available for residents and visitors, city centre car parks are nearby.

11. The principal objection revolves around the behaviour of the residents both in terms of business and residential amenity, particularly for those who live in the adjoining flats. In the past, hostel tenants appeared to have had a very casual attitude towards their neighbours and complaints about unsocial behaviour were common. In addition, hostel refuse was being stored under Stair 2, which does not belong to the appellant, where it regularly caused a nuisance through lack of proper storage which led to unpleasant odours and rubbish being spread out onto Lombard Street.

12. With this history, it is hardly surprising that the neighbours, both in business and residential accommodation, have serious reservations over the proposed use as a HMO. They are concerned about their amenity, safety and the public image of Inverness that relies on tourism as a major source of revenue.

13. To answer these concerns, the appellant is carrying out extensive works restoring the premises to attract a better class of tenant, and the quality of accommodation is being raised to a standard that most occupiers would find both attractive and convenient. Even though HMO accommodation is likely to be medium term while the residents seek more permanent places to live, each room would be their primary home, so the tenancies are likely to be longer than would be expected in a hostel that attracts more transient visitors.

14. I therefore take the view that, with number of persons limited to the 31 applied for, living in newly decorated rooms with updated kitchen, laundry and communal facilities, shower rooms and WCs, future tenants are more likely to form a greater attachment to their rooms and treat them with greater respect, particularly as the appellant intends to have a member of staff in residence. This should result in far fewer instances of noise and disturbance within the premises while proper control of the storage and collection of refuse should also remove the previous nuisance from scattered rubbish and odour.

15. Notwithstanding their previous use as a HMO, the application seeks a change of use presumably to place the premises on a sound planning footing. However, bearing in mind the concerns of local residents and businesses over the previous hostel use, and the number of bunk beds I saw in the rooms during my inspection, I share their concern that this ancillary use might revert to a full time hostel with a larger number of temporary residents and a return to the previous problems. For that reason, because the application is for a maximum of 31 persons in 12 rooms, I find it both necessary and reasonable to impose a condition that this number shall not be exceeded.

16. I therefore conclude that, subject to the conditions to be imposed, the proposed change of use would result in a considerable improvement in residential and business amenity in the High Street by reason of noise, disturbance and refuse storage.

#### *Material considerations*

17. Most of the points raised in submissions have been covered in this decision, so the previous problems experienced by the neighbours should now be addressed. I accept the Crown and City Centre Community Council's point that a single HMO can provide accommodation for many bed spaces, so the threshold percentage does not give a clear indication of the number of residential units involved. However, the council points out that the current policy counts the number of HMO households which is the standard used to measure the total number of HMOs with each census output area of the city, and that the application meets the policy criteria.

18. There has clearly been a problem with anti-social behaviour in and around this building in the past but, while I am satisfied that the appellant's current improvements should lead to an improvement in this regard, anti-social behaviour is not a planning matter and is the subject of other legislation. Similarly, the issue of a HMO Licence is separate from the grant of planning permission, although both are likely to be required for a development of this size.

#### *Conditions*

19. The council have suggested 4 conditions, should this appeal be allowed, to which the appellant has raised no objection, and I accept subject to minor amendments. These conditions will ensure that management and maintenance procedures and a Waste Management Plan are in place prior to occupation of the HMO, that adequate off-street storage for refuse is provided within premises, and not within adjoining Stair 2 which can only be used as a fire escape, and that refuse shall be placed outside only on the day of collection. In addition to these, I shall impose the condition, referred to in paragraph 15 above, to ensure that the approved number of 31 persons shall not be exceeded.

20. The council also requested that consideration be given to imposing a condition that limits the use of the HMO to avoid its simultaneous use as a hostel but, in the absence of any specific definition as to when such a use would prevail, such a condition would be insufficiently precise and enforceable to accord with the tests in Circular 4/1998. In any event, with proper supervision by staff and the limit on the number of persons residing on the premises, whether they are longer term HMO or short term Hostel tenants should not be relevant.

### Conclusion

21. My overall conclusion is that, in the light of the history of use of the property as a HMO, the alterations being carried out to the premises and the reduction in the number of residents would result in a major improvement in nearby residential and business amenity and, thereby, to the image of Inverness City as a whole.

22. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*John H Martin*

Reporter

### Conditions

1. The maximum number of persons residing in the House in Multiple Occupation (HMO), hereby permitted, shall not exceed 31 persons in the 12 rooms shown on application Drg No: 2015/GSA2/01.B.

*Reason: To control the number of residents occupying the premises at any time.*

2. There shall be no occupation of the HMO until the management and maintenance procedures that are agreed with the Licensing Authority for this HMO have been submitted to and approved by the Planning Authority. Thereafter all management and maintenance procedures agreed to in this document shall be adhered to at all times.

*Reason: In the interests of protecting the amenity of neighbouring properties.*

3. There shall be no occupation of the HMO until a copy of the contract of the services referred to in the Waste Management Plan, submitted to the Council on 26 November 2015, has been submitted to and approved by the Planning Authority. The approved Waste Management Plan shall thereafter be adhered to at all times.

*Reason: To ensure that waste is properly managed in the interests of residential amenity.*

4. Before the HMO, hereby  permitted, is brought into use, a scheme providing for adequate off-street storage and management of refuse shall be submitted to and

approved by the Local Planning Authority. Thereafter, all refuse and recyclable materials associated with the development, hereby permitted, shall be stored within the approved bin store **located on** the ground floor under Stair 1 as identified on the Ground Floor Plan on application Drg No: 2015/GSA2/01.B

*Reason: In the interests of residential amenity.* □

5. No refuse or recycling material shall be stored or placed for collection on the public highway or pavement, except on the day of collection.

*Reason: In the interests of residential amenity.* □

6. For the avoidance of doubt, Stair 2 shall be used only as an emergency fire escape from the HMO, hereby permitted, and for no other purpose. No waste or refuse containers associated with the development shall be stored around or within the bin store located under Stair 2.

*Reason: To protect the amenity of adjoining premises and residents.*

### 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.