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Ms K Lyons
Highland Council
Sent By E-mail

Our ref: LBA-270-2006
Planning Authority ref: 16/03071/LBC

26 April 2017

Dear Ms Lyons

**LISTED BUILDING CONSENT APPEAL: LAND 75M EAST OF 162 STOER
LOCHINVER**

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. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

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
Planning and Environmental Appeals Division





Decision by Sue Bell, a Reporter appointed by the Scottish Ministers

- Listed building consent appeal reference: LBA-270-2006
- Site address: Stoer Church, 75m East of 162 Stoer, Lochinver, IV27 4JD
- Appeal by Mr Guy Morgan against the decision by Highland Council
- Application for listed building consent 16/03071/LBC dated 15 July 2016 refused by notice dated 24 October 2016
- The works proposed: Restoration and conversion of disused church to residential, installation of septic tank and soakaway
- Date of site visit by Reporter: 16 March 2017

Date of appeal decision: 26 April 2017

Decision

I dismiss the appeal and refuse listed building consent.

Preamble

There is a separate, but linked, appeal against refusal of planning permission for the proposed scheme (PPA-270-2165). There is also an application for expenses, which is dealt with in a separate decision.

Reasoning

1. Section 14 (2) of the Listed Building and Conservation Areas (LBCA) Act requires me to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The determining issues in this appeal are the extent to which the proposed restoration and subsequent use will preserve the special interest of (a) the listed building and (b) its setting. I consider each of these aspects separately below.

(a) The listed building

2. The category C listed building is 'Stoer Church and old burial ground'. The listing description is: "*Thomas Telford, 1828. Standard Parliamentary T-plan church; coursed rubble, contrasting tooled dressings. Depressed arched paired doors in outer bays of south elevation; similarly detailed paired centre windows; similar single windows in end gables and rear wing. Guted and roofless. Church stands in small burial ground enclosed by rubble drystone wall.*" Thus, the listing covers the church, the surrounding graveyard and

its enclosing wall. Many (but not all) of the grave markers within the graveyard pre-date 1948, have a clear functional relationship to the church, and lie within the curtilage of the church and hence are part of the listed building.

3. The building is currently derelict, and is included on the 'buildings at risk' register. During my site inspection, I noted fallen masonry and cracks in one of the gable walls. The boundary walls for the graveyard are intact. Numerous memorial stones and grave markers are present in the area enclosed within the boundary walls. Some of these are badly weathered, making it difficult to decipher the legends. Some stones have also fallen over.

4. Externally, the works would aim to restore the building, window and doors as near to the original form as is practical. They comprise: addition of a new slate roof, windows and doors; replacement rainwater goods; and repointing of stonework. Internally the design would draw on the original layout, with upper levels echoing the congregation galleries and inclusion of a central void. Ancillary services would be provided. These would entail the installation of an oil storage tank, a septic tank and soakaway. Other services (including water, electricity and telephone) would also be provided

5. No changes to the footprint of the old church, layout of the boundary walls or access points through them are proposed. Consequently, I conclude that the proposals for the building would preserve and restore the structure of the church element of the listed building and bring it back into use. Effects on the graveyard are considered below,

6. The appellant has provided a construction management plan, which includes details of how the development would be implemented to avoid adverse effects on the physical structure of the listed features including the graves. In addition, the planning authority has recommended that the location of temporary site compounds should be subject to condition, to ensure that these are located in a sensitive manner.

7. Ground resistance surveys have been conducted to identify the location of unmarked graves and a suitable position for the construction of trenches to hold services and the oil tank supply. A legal right of servitude has been agreed with the council for installation of services. Trenches for services would be dug by hand by an archaeologist, to avoid damage to the burials.

8. The proposals would require large items to be lifted into the site via a crane. The construction management plan proposes the creation of a temporary access route from the gate through the boundary wall to the western-most door in the building. Details of the protective materials, which would be added as layers along the access route to safeguard the underlying graves, were included in the construction management plan. These would provide access for the mini excavator and mini dumper, which the construction management plan indicates would be required on site.

9. I observed a large number of marked graves between the southern side of the old church and the access through the boundary wall. Whilst many of the marker stones are laid flat into the surface of the earth, there are some standing stones, at least one of which is showing signs of leaning. These are located close to or possibly on the route of the proposed access track. Although the route of the track could be agreed on the ground, the arrangement of the graves is such that I consider it would not be possible to construct an access route that did not cross any of them. Whilst the construction management plan

states that the surface of the temporary access track would be checked to determine whether it is of suitable strength to allow the passing of small machinery without disturbance to the surrounding ground, I consider that there is a risk that the weight of the machines would cause the stones to crack. In addition, there are no measures identified to protect the remaining standing stones, or the boundary wall, although this could be secured by a condition to any planning condition that was granted.

10. The proposals include installation of an oil tank adjacent to, and within the eastern wall of the graveyard, where the ground is uneven. The supply pipe to the old church would run close to several graves. As noted above, trenches would be dug by hand, by an archaeologist, to protect graves from disturbance.

11. The church is surrounded on three sides (south, east and west) by graves, with the majority of the marked graves being located between the entrance gate in the boundary wall and the southern face of the church. Graves appear to extend to within approximately 1 m of the south-eastern window of the church, and also extend up to the eastern and western doors. I fail to see how it would be possible to enter through either door of the church without walking over a grave marker. These features are already subject to weathering, and I consider that walking over these features on a daily basis to access the building would add to the rate and severity of damage to the structures.

12. In conclusion, the proposals would preserve the church element of the listed building. Whilst the appellant has provided detailed information about construction methods, I consider that there remains a tangible risk that harm could occur to the gravestones which also form part of the listed building. Damage to grave markers adjacent to the access door into the church would also result during occupation of the dwelling.

(b) The setting of the listed building

13. The church lies within a graveyard defined by boundary walls. In addition to forming part of the listed building, the graveyard provides the immediate setting for the church. It is located in a prominent position, sitting at a higher elevation than the surroundings, and is visible from the B869 public road, which runs through Stoer. I observed that it forms one of a sequence of three burial grounds, which extend down the hill from the church towards the sea.

14. The use of a former church as a dwelling is not necessarily incompatible with its setting, even when this includes a graveyard in close proximity. There are examples throughout the country of converted churches lying adjacent to graveyards. The appellant has supplied a copy of the Scottish Civic Trust's '*New uses for former church buildings*', which provides support for the concept of re-use of churches. They have also provided details of two other churches that have been restored for domestic use. Whilst these provide useful illustrations of what can be achieved, each case has to be considered on its individual merits and circumstances.

15. I consider that a key feature of the successful conversion of churches within graveyards has been the ability to separate the private domestic use of the building, including any external amenity space that it enjoys, from the public space around the graves and the access to them. This has been achieved in various ways including creating

separate access points to the building and graveyard, or using sensitively located fences or hedges to screen the different uses.

16. The appellant has obviously taken great care to avoid altering the layout of the church or the footprint of the site as a whole. The proximity of the graves to the existing access points to the building means that there is no space to provide a buffer between the private house and public graveyard on the southern side of the building. The existing access point through the boundary wall would be used by both residents of the property and the public. Entrance to the dwelling would be directly from the public space in the graveyard, and require crossing of marked graves. Had there been an alternative access point to either the graveyard or church at the rear of the property, this would have allowed some separation of the private dwelling from the public space.

17. The proposed design of the restored church allows for a four-bedroom dwelling. This would provide for a high level of activity through the graveyard and over grave markers, particularly given the proposed use of the property as a holiday let.

18. I consider that this overlapping of domestic and public use would be to the detriment of the character and ambience of the graveyard and hence fail to preserve the setting of the listed building.

19. The property lacks external amenity space for the ancillary activities associated with residential occupancy (storage of refuse bins, recycling facilities, oil tank etc.). The oil tank is to be positioned within the boundary of the graveyard. These ancillary features would be an incongruous feature within the graveyard, which would be particularly noticeable, given the prominent position of the site. I consider this would be detrimental to the setting of the listed building.

Conclusions

20. For the reasons set out above, on balance, I conclude that the proposals would not preserve the special interest of the listed building owing to the increased damage to grave markers as a result of accessing the church, and during construction works. In addition, the proposal would not preserve the setting of the listed building, owing to the lack of separation between private domestic use and public space, and the presence of ancillary items associated with domestic occupation. I do not consider the benefits arising from restoring the external fabric of the church to outweigh these adverse effects.

Sue Bell
Reporter



Decision by Sue Bell, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2165 & LBA-270-2006
- Site address: Land 75M East Of 162 Stoer, Lochinver, IV27 4JD
- Claim for expenses by Mr Guy Morgan against Highland Council

Date of decision: 26 April 2017

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. Circular 6/1990: '*Awards of expenses in appeals and other planning proceedings*' provides that awards of expenses do not follow the decision on the planning merits, and are only made where each of the following tests is met:
 - the claim is made at the appropriate stage in the proceedings;
 - the party against whom the claim is made has acted unreasonably; and
 - this unreasonable conduct has caused the party making the application unnecessary expense, either because it was unnecessary for the matter to come before the Scottish Ministers, or because of the way in which the party against whom the claim is made has conducted its side of the case.
2. Both parties accept that the application for expenses has been made at the appropriate stage of proceedings. Both parties also accept that the Planning Applications Committee is under no obligation to accept the advice of the Area Planning Manager.
3. Circular 6/1990 provides examples of unreasonable behaviour, but stresses that these are illustrative, not exhaustive. The assessment of unreasonable behaviour remains a matter of judgement which must be considered on a case by case basis.
4. The appellant considers that the actions of the planning authority meet a number of the illustrative examples of 'unreasonable behaviour' included in Circular 6/1990. In summary, the appellant considers that in reaching its decision, the planning authority has acted unreasonably by:
 - failing to give complete, precise and relevant reasons for refusal of the application;



- reaching its decision, without reasonable planning grounds for doing so;
- refusing the application for planning permission solely on the grounds that it does not accord with the provisions of the development plan and without having had regard to other material considerations; and
- refusing the application because of local opposition, where that opposition is not founded on valid planning reasons.

5. In addition, the appellant considers that the planning authority has displayed unreasonable behaviour during the appeal process, by missing deadlines for providing information.

6. In response, the planning authority states that, in reaching its decision the Planning Applications Committee applied the statutory tests; and it is entitled to rely on the minute of the meeting to support its decision. It also acknowledges that there was a delay in issuing the PARF, but notes that some of the delay was not of its making. The planning authority also questions the nature and value of any unnecessary expense, which the appellant states they have incurred.

7. Scottish planning policy sets a presumption in favour of sustainable development, subject to satisfying certain tests. This presumption is reinforced through policies within the local development plan. In this instance, the tests relate to the effects of the proposal on a category C listed building and hence the requirements of the Listed Building and Conservation Areas Act are also relevant. As these tests include an element of subjectivity, it is entirely possible and reasonable for the planning committee to reach a decision that differs from that of the Area Planning Manager.

8. Identical reasons for refusal are stated on the decision notices for planning permission and listed building consent. These make clear reference to the planning grounds on which the application has been refused. Reference is made to the local development plan and the location of the church within the graveyard, which is a material consideration. The stated reasons for refusal do not make mention of the local opposition to the proposals and consequently the weight (if any) which has been attached to this.

9. My separate decision on the merits of the appeals makes it clear that the planning authority had reasonable grounds for its concerns in regard to the impacts of the proposed development on the setting of the listed building and consequently whether the proposal met the requirements of the local development plan.

10. Overall, I conclude that the planning authority did not act unreasonably. On that basis there is no need to consider whether the appellant incurred unnecessary expense.

11. I therefore decline to award any expenses to the appellant.

Sue Bell

Reporter