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Ms K Lyons
Highland Council
Sent By E-mail

Our ref: PPA-270-2165
Planning Authority ref: 16/03070/FUL

26 April 2017

Dear Ms Lyons

**PLANNING PERMISSION APPEAL: LAND 75M EAST OF 162 STOER
LOCHINVER IV27 4JD**

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

- Planning appeal reference: PPA-270-2165
- Site address: Land 75M East Of 162 Stoer, Lochinver, IV27 4JD
- Appeal by Mr Guy Morgan against the decision by Highland Council
- Application for planning permission dated 15 July 2016 refused by notice dated 24 October 2016
- The development 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 planning permission.

Preamble

There is a separate, but linked, appeal against refusal of listed building consent for the proposed development (LBA-270-2006). There is also an application for expenses, which is dealt with in a separate decision.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. As the proposal involves a listed building, I am also required by section 14 (2) of the Listed Building and Conservation Area (LBCA) Act to have special regard to the desirability of preserving the listed building or its setting and any special features of historic or architectural interest that it possesses.
2. Having regard to the provisions of the development plan and the LBCA Act, the main issues in this appeal are: (a) the principle of re-development of the church; (b) whether conversion of Stoer church would preserve the category C listed building; (c) the effect of the conversion on the setting of the listed building; and (d) effects of proposals upon local communities and visitors.

(a) The principle of re-development of the church

3. The relevant development plan is the Highland-wide local development plan (HWLDP), 2012 and supporting supplementary planning policy guidance, including the



'Historic Environment Strategy'. The Sutherland Local Plan (as continued in Force, 2016) does not contain any relevant policies and the general policies in that plan have been superseded by those in the HWLDP. Likewise, the modified proposed Caithness and Sutherland local development plan (2016) does not contain any relevant policies.

4. Highland Council considered the provisions of policies 28, 36, 42, 57, 65 and 66 of the HWLDP to be particularly relevant in considering the application.

5. Policy 28 - sustainable development - provides support for developments which promote and enhance the social, economic and environmental wellbeing of the people of Highland. Proposals are assessed against a series of criteria, including compatibility with public service provision; impacts on landscape; and impacts on cultural heritage. Proposals judged to be significantly detrimental in relation to these criteria will not accord with the HWLDP. The proposals would restore an existing feature within the landscape and details of how services would be provided to the property are included within the appeal documents. In these respects, the proposal meets the requirements of policy 28. I give further consideration to the effect of the proposals on the cultural heritage resources, principally the listed building and its setting, in paragraphs 12 – 30.

6. The proposal relates to the restoration of the old church for use as a dwelling house and for holiday lets. Consequently the proposal accords with the requirements of policy 42, which supports development proposals that bring previously-used land back into beneficial use. It also meets the requirements of policy 36 for development in the wider countryside, as the proposal would restore a feature which is already present within the landscape and hence is considered to be acceptable in terms of its siting and design and is sympathetic to existing patterns of development in the area.

7. Policy 57 of the HWLDP defines criteria for development affecting features of the natural, built and cultural heritage. The category C listed building is considered a feature of local importance, for which developments will be allowed if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource. I consider the effect of the proposals on the listed building and its setting in paragraphs 12 – 30.

8. Policies 65 and 66 set out criteria for the treatment of waste and rain water. I consider that the proposed treatments would be satisfactory, and accord with the requirements of these policies. Whilst I note the representation from the Board of the Assynt Crofters Trust, concerning permission for the soakaway, I consider this to be a legal issue between the parties.

9. Highland Council's Historic Environment Strategy states that the deterioration of vacant historic buildings is detrimental to the character and appearance of an area. Accordingly, strategic aim 8 of the strategy encourages the restoration and re-use of 'buildings at risk'. However, this has to be balanced against the need to preserve listed buildings and their settings from harmful developments, as required by the LBCA Act, policies 28 and 57 of the HWLDP and strategic aim 6 of the Historic Environment Strategy.

10. Further support for allowing change to listed buildings to enable their active use, is provided in Scottish Planning Policy (2014) and Historic Environment Scotland's policy

statement (June 2016). However, this change should be managed to protect the special interest of the listed building.

11. In conclusion, subject to the effects of the proposed development on the built and cultural heritage resources, which I consider further in paragraphs 12 – 30, I consider that the proposal meets the relevant requirements of the local development plan in terms of the principle of restoring the building and bringing it back into use.

(b) Whether conversion of Stoer church would preserve the category C listed building

12. 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. Gutted 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 I consider them to be part of the listed building.

13. 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.

14. 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 with 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

15. 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,

16. 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.

17. 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. Disturbance arising from the construction of trenches for services could be controlled by a condition requiring them to be dug by hand by an archaeologist.

18. 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.

19. 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.

20. 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. Measures to protect graves from disturbance during construction of the pipe could be secured by condition.

21. 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.

22. 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 would also result during occupation of the dwelling.

(c) The effect of the conversion of the church on the setting of the listed building

23. 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 within Stoer, which extend down the hill from the church towards the sea.

24. The application was refused, in part as the planning authority considered that the use of the former church as a dwelling house was inappropriate given its location within a graveyard. The relationship of the former church to the surrounding graveyard is a material consideration.

25. 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.

26. 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.

27. 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

28. The proposed design of the restored church allows for a four-bedroom dwelling. This would provide for a high level of activity, particularly given the proposed use of the property for as a holiday let. The appellant has demonstrated a willingness to use the property in a manner that is sensitive to its location. However, they are not in a position to vouch for the nature and character of any tenants who may occupy the house.

29. The property lacks external amenity space, although there is public open space, such as the beach, in close proximity to the building. However, external amenity space is still required for the ancillary activities associated with residential occupancy (storage of

refuse bins, recycling facilities, oil tank etc.). 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.

30. I conclude that the overlapping of domestic and public use and the presence of ancillary items connected to domestic 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.

(d) Effects of proposals upon local communities and visitors

31. Scottish Planning Policy (2014) indicates that support or concern expressed on matters material to planning should be given careful consideration in determining planning applications. It is clear from the more than 40 letters of representation, which were received in connection with the original application and appeal, that the site is important to members of the local community and visitors to the area. These representations expressed both support and opposition to the proposals.

32. Several letters expressed support for a proposal which would maintain an important historic building. Other letters raised concern about the effects of the proposals on the graves, the setting of the building, and lack of external amenity space. I have considered these issues in the paragraphs above.

33. Issues relating to provision of car parking and the suitability of the road have also been raised. I note that the site lies adjacent to an adopted road, albeit it is currently overgrown. Consequently, I consider that the proposed access and parking arrangements are satisfactory.

34. I do not consider that other issues raised in representations, namely, the existing supply of holiday accommodation within the area, and whether the necessary permissions have been granted to enable installation of the soakaway and services, are material considerations.

35. I note the appellant's assertion that Highland Council's view of the effect of the proposals on the building and graves appears to differ depending on whether it is commenting as a planning authority or as a land owner. However, I do not consider that to be a material consideration in my decision.

Conclusions

36. Scottish Planning Policy and the HWLDP set a presumption in favour of sustainable development, but not at any cost. Thus, there is a clear tension between the need to find a new use for this category C listed building included on the 'buildings at risk' register, and the need to preserve the listed building and its setting. In essence, the key issue is whether the benefit of preserving part of the listed building (the old church), would outweigh the potential harm to another part of the listed building (the grave markers) and the harm to the setting of the listed building as a whole, including the character and ambience of the historic graveyard.

37. For the reasons set out above, I conclude that the proposals would result in increased damage to grave markers as a result of accessing the church, and during construction works. Consequently, the proposals do not meet the requirements of policies 28 and 57 of the HWLDP and strategic aim 6 of the Historic Environment Strategy in relation to their effects on cultural heritage. In addition, the proposals would fail to 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. Consequently, the proposals are contrary to the requirements of section 14 (2) of the LBCA. There are no material considerations which would still justify granting planning permission.

38. I accept that this decision means that the building will remain on the 'buildings at risk' register, and is vulnerable to further natural degeneration. However, I have no doubt that it would be beneficial to bring this listed building back into a safe condition, and that an acceptable alternative solution could be identified, which preserves its setting.

39. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

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