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

- Planning appeal reference: PPA-270-2185
- Site address: Moorfield House, Deshar Road, Boat of Garten, PH24 3BN
- Appeal by Garten 1 LLP against the decision by The Highland Council to grant planning permission reference 17/03827/FUL dated 27 October 2017 subject to conditions
- The development proposed: change of use from guest house (Class 7) to dwelling/holiday let (Class 9) and alterations
- The conditions appealed against are: Conditions 1 and 2 as they are believed to be unreasonable in planning terms.
- Date of site visit by Reporter: 20 March 2018

Date of appeal decision: 16 April 2018

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## Decision

I allow the appeal and vary the terms of the planning permission by deleting Conditions 1 and 2.

## Reasoning

1. The appellant is seeking the removal of Conditions 1 and 2 to enable the property to be used in line with Class 9 use. While I note this specific request, the entire planning permission is before me for consideration as part of this appeal. I am also required to consider therefore whether the change of use of the property from Use Class 7 to Use Class 9 in terms of the Town and Country Planning (Use Classes) (Scotland) Order 1997, is appropriate. If I find that it is so, I will then go on to consider whether the planning conditions in question are required and meet the tests set out in Circular 4/1998: The Use of Conditions in Planning Permissions.

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the area comprises the Cairngorms National Park Local Development Plan, March 2015. The most relevant policies in this case are: Policy 2 Supporting Economic Growth which generally supports tourism and leisure development in appropriate circumstances; and Policy 3 Sustainable Design which supports the conversion and alteration of existing buildings where this would respect the character of the building and the local area. Having regard to the provisions of the development plan, the main issue in this appeal is the impact of the proposed development on the character and amenity of the area.

3. The property is a detached, five bedroom house surrounded by a mature garden with four in-curtilage parking spaces. It is located within the centre of Boat of Garten within an established residential area adjacent to St Columba's Church. The council indicates that the property previously operated as a guest house or bed and breakfast facility.

4. In responding to the appeal, the council considers that the level of use of the accommodation for holiday let (as proposed in the application) could differ to that of a dwelling house occupied by one family, depending on the group that has let the property. This wider potential occupation of the property could have adverse impacts on amenity, specifically disturbance and noise. These concerns are also behind most of the objections raised to the application. Further related concerns are highlighted with regard to the ongoing management of the property, as the owner is not known or resident in the area, and to the proposed use of external buildings within the property grounds.

5. Within the 1997 Use Classes Order, no distinction is made between residential occupancy and holiday let. In this case the council has accepted that use for holiday let could take place under Use Class 9. Within this use class, the property could also be occupied as a single dwelling or continue as a bed and breakfast or guesthouse facility providing that no more than two bedrooms are used for such purposes.

6. Within the current use class (Class 7), the entire property could be used for a range of purposes including a hotel, hostel or guest house. While increased frequency of visitors to the property may arise if it is occupied as a holiday let rather than a single dwelling, I take into account the existing use. I also note the general policy support for tourism and leisure development in the area and for the suitable conversion of existing buildings. The proposal provides no increase in the number of bedrooms at the property and no objections have been raised by the council's internal service providers with regard to the proposed use. In particular, no noise condition has been suggested. No buildings in the grounds of the property are intended to provide additional living space and the proposed use of the property for residential accommodation would be generally compatible with the surrounding area. With regard to the other concerns raised in representations, those relating to anti-social behaviour and the future management of the property all lie beyond the scope of this appeal.

7. 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 justify refusing to grant planning permission. I have considered all the other matters raised but there are none that would lead me to alter my conclusions.

8. With regard to the conditions imposed, while the appellant is concerned that an error has been made by the council in including both Conditions 1 and 2, the council has clarified that both were intended in the committee decision.

9. Condition 1 requires that the planning permission is for the benefit of the applicant only. The reason given for this condition is to enable the planning authority to exercise

appropriate control of the development. The council explains that this is in order to address concerns regarding the prospect of the current applicant relinquishing ownership of the property. The appellant considers that this condition restricts the future marketing and sale of the property as a dwelling house. Further to this, significant expenditure is planned for works on the property as part of the change of use.

10. In reviewing the tests for conditions set out in Circular 4/1998, I note that those of necessity and reasonableness are likely to be most pertinent in this case. With regard to Condition 1, it is unclear as to why the council would want to control the future ownership of a dwelling house in this instance. The intention for use as holiday let has raised local concerns with regard to future ownership and management of the property. However I do not regard these matters as sufficient to justify restricting the current owners choices regarding the future sale and investment within the property. Such an approach appears to me to be unreasonable and unnecessary.

11. Condition 2 grants planning permission for a temporary period to 27 October 2019. The reason given for this condition is to enable the planning authority to reassess the impact of the development on neighbour amenity. The appellant highlights that at the end of the temporary period, the use would revert back to a guest house requiring reinstatement works to operate it as such. They also highlight that this uncertainty, in terms of the type of accommodation available, would affect future bookings.

12. The council indicates that it wants this period of time to enable any potential issues regarding noise disturbance to be addressed. An assessment of the impact on local amenity including noise, has been undertaken as part of the application and no specific issues have been raised or that warrant the need for particular conditions. I have also found that the proposed use of the property for residential accommodation would be generally compatible with the surrounding area. While it may be physically possible to change the property back to a guest house at the end of the temporary period, I consider that the expectation to do so, without any reasonable basis, would be unduly restrictive.

13. Overall, I do not consider that the conditions in question meet the tests of Circular 4/1998 or are required to achieve compliance with the development plan. I do not find there to be any other matters raised that would lead me to a different conclusion.

*Claire Milne*  
Reporter