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Mr B Robertson  
Highland Council  
Sent By E-mail

Our ref: PPA-270-2172  
Planning Authority ref:16/05054/FUL

31 August 2017

Dear Mr Robertson

**PLANNING PERMISSION APPEAL: 10A-10E MAIN STREET GOLSPIE KW10  
6RN)**

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

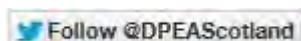
The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the 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. 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

*Christine Brown*

**CHRISTINE BROWN**  
**Case Officer**  
**Planning and Environmental Appeals Division**





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Decision by Rob Huntley, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2172
- Site address: 10A to 10E Main Street, Golspie, KW10 6RH
- Appeal by Lee-Mac Properties Ltd against the decision by Highland Council to grant planning permission reference 16/05054/FUL dated 30 March 2017 subject to conditions
- The development proposed: Conversion of offices to domestic flats on two floors at first and second storey with entry at ground floor
- The conditions appealed against are: conditions 1, 2, 3 and 4 as listed at Appendix 1 to this decision notice
- Application drawings: Proposed First Floor Plan AM/875/05; Proposed Second Floor Plan AM/875/06; Proposed Elevations 1 AM/875/07A; Proposed Elevations 2 AM/875/08; Site Plan AM/875/10
- Date of site visit by Reporter: 11 August 2017

Date of appeal decision: 31 August 2017

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## Decision

I allow the appeal and vary the terms of the planning permission granted by the council by deleting conditions 1, 2, 3 and 4 and substituting for them the following 2 conditions:

1. None of the 8 flats hereby permitted shall be occupied until the car parking spaces shown on the submitted Site Plan (drawing AM/857/10), including the 2 disabled spaces indicated, shall have been laid out and made available for use. 12 of the parking spaces to be provided shall thereafter be retained for the exclusive use of residents of, and visitors to, the flats hereby approved.

*Reason: To ensure adequate parking provision to serve the proposed flats.*

2. The approved alterations to the external faces of the building, including the blocking-up of existing and installation of new window openings, shall be undertaken using materials and finishing colours to match the relevant adjacent part of the existing building.

*Reason: To ensure a satisfactory appearance of the building, in the interests of visual amenity.*

## Preliminary matters



1. The council granted conditional planning permission for the conversion of the 2 upper floors at the appeal property from offices to provide 8 flats. The appeal is against the conditions attached to that permission. I am however required to consider the development proposal afresh, including whether planning permission should be granted or refused for the proposed development, notwithstanding the council's previous decision.
2. The appellant maintains that its payment of a financial contribution of £4000 to the council was made as a result of what it describes as coercion. Such a contribution should only be sought, the appellant comments, through a planning obligation and where the policy tests set out in Scottish Government circular 3/2012 (Planning Obligations and Good Neighbour Agreements), are met. The appellant says that, as it refused to enter into an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997, there was no basis for the payment of the contribution. The contribution requested by the council was nevertheless made on behalf of the then applicant (now the appellant) prior to the permission being granted by the council. The council has explained that the requested contribution was consistent with the adopted Developer Contributions Supplementary Guidance (2013), and that the sum has since been applied towards the installation of a bus shelter in Main Street close to the appeal site. It would be normal practice for such a contribution to be secured by a planning obligation under section 75 of the 1996 Act. However, in this case the appellant made a direct payment as it was unwilling to enter into an agreement or provide a unilateral undertaking. If the appellant had not made the contribution requested, and the council had then refused to grant the planning permission applied for, an appeal could have been made against such refusal. However, any challenge on the basis of procedural irregularity or unlawfulness in the consideration of the application would be a matter for the courts and is not a matter before me in this appeal against the conditions of the planning permission granted.

## Reasoning

3. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The determining issues in this appeal are whether the principle of the proposed development would accord with the provisions of the development plan, and whether the conditions attached to the planning permission granted by the council are necessary in the interests of road safety, particularly for pedestrians, or to safeguard visual amenity.

### The principle of the proposed development

4. The appeal property lies within the centre of Golspie fronting Main Street, part of the A9 trunk road. It is within the Settlement Development Area (SDA) as defined in the adopted Sutherland Local Development Plan (2010) and the proposed Caithness and Sutherland Local Development Plan. Policy 34 of the adopted Highland Wide Local Development Plan (2012) provides that SDAs are the preferred area for most types of development, including for residential purposes, and policy 28 supports the principle of the re-use of existing buildings.

5. The appeal proposal involves the conversion of the vacant office accommodation at first and second floor levels to provide 8 flats, with the non-residential ground floor accommodation facing Main Street, currently occupied as a branch of Bank of Scotland, remaining unchanged. An existing car park, a short distance to the north of the appeal building and also forming part of the appeal site, would be retained for use by residents of the proposed flats and in connection with the bank premises.

6. I note that representations made to the council at application stage included the suggestion that unacceptable overlooking would occur of residential properties on the opposite side of Main Street and of the garden to the west of the appeal building. Although additional windows would be installed in connection with the proposed development, these would be set within the roof areas at second floor level. Those on the south-facing elevation would largely replicate the existing windows at first floor level, with a separation of some 30 metres from the properties on the opposite side of Main Street. At such a distance I am satisfied that no unacceptable overlooking of nearby properties would occur in that direction. The proposed side-facing windows would be relatively narrow and set within the sloping roof profile. This would limit the potential for direct overlooking from these windows of the garden area to the west, avoiding any unacceptable loss of privacy at nearby properties.

7. For the above reasons I am satisfied that the proposed conversion of the 2 upper floors of the appeal building to provide 8 flats would be consistent with the relevant provisions of the development plan outlined above. The proposed development would amount to a sustainable re-use of the existing vacant accommodation and no unacceptable harm would be caused to amenity or in other ways. I therefore agree with the council and the appellant that the residential conversion of the upper floors is acceptable and that planning permission should be granted for the proposed development.

#### The conditions

8. Circular 4/1998 explains that, as a matter of policy, conditions should be imposed only where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects.

9. The conditions attached to the planning permission granted by the council seek to regulate access arrangements to the building, the provision of car parking, the creation of a defined pedestrian route between the car parking area and the entrance to the proposed flats, and the external finishes to be used. The appellant maintains that each of the conditions of the planning permission is unenforceable and should not have been attached. It accordingly seeks deletion of all 4 of the conditions of the planning permission granted by the council.

10. Condition 1 requires that access arrangements shall be provided to the satisfaction of the planning authority. As worded the condition lacks clarity and is imprecise. Notwithstanding the mention in the condition that 12 car parking spaces should be delineated and a lockable access gate provided, it is not clear what access arrangements the condition is intended to refer to. No changes are proposed to the vehicular access arrangements to the building or the car parking area. Nor are any changes proposed to the

ways in which access on foot would be obtained to the entrances to the upper floors of the building. The submitted drawings make clear that these are to be retained as existing.

11. Paragraph 31 of circular 4/1998 explains that conditions requiring measures to be "*to the satisfaction of the planning authority*" do not provide sufficient certainty as to what the applicant must do to secure compliance. The submitted site plan (drawing No AM/857/10) shows the layout of the car park proposed. This indicates a total of 19 spaces, including 2 larger spaces suitable for disabled users. During my site inspection I noted that 20 spaces had been delineated within the car park, with 2 retractable bollards installed at its entrance. Although the submitted site plan indicates a lockable gate rather than bollards, the council has indicated that the arrangement now in place would have been agreed to if submitted prior to the making of the appeal. However, I noted that the 2 larger disabled spaces shown on the submitted plan had not been provided at the time of my site inspection. I consider that it is necessary and appropriate to ensure that the parking spaces provided are retained to serve the proposed development, and that provision is included to meet the needs of those with impaired mobility. I have therefore substituted a condition to achieve these objectives, including that the car parking spaces be retained, but worded to accord with the requirements of circular 4/1998. My observations during my site inspection lead me to conclude that the locality is not one where a shortage of parking capacity is evident. Ensuring that the car parking spaces would remain available for use in connection with the flats does not therefore necessitate specific physical measures being taken to prevent use by others, although the bollards would enable access to the car park to be regulated.

12. The vehicular access from Back Road to the car parking spaces associated with the appeal property also serves a range of commercial units, including a dental practice. A line of bollards level with the rear wall of the appeal building prevents vehicles gaining access to Main Street past the western entrance to the upper floor accommodation, but allows pedestrian and cycle movements. I note that there is no continuous segregated footway between the car parking area and Main Street or the entrance to the proposed flats. However, during my weekday mid-afternoon site inspection I observed a number of individuals and small groups of people using this route on foot to travel between the Woodlands Road housing area, and the car park serving the Sutherland swimming pool and community centre complex to the north, and Main Street to the south, passing the appeal property. I also observed that the small number of vehicular movements in this area passed at slow speed in view of the alignment and cul-de-sac nature of the road. In view of this I conclude that the use of this public road by pedestrians, passing the commercial units present there, is not such as to compromise highway safety to any significant degree. For the same reasons there would be no undue highway safety issue for residents of the proposed flats passing on foot from the car park spaces to the building entrances.

13. Conditions 2 and 3 appear to be intended to secure the creation of a delineated pedestrian route between the car parking spaces and the entrance to the appeal building. The creation of such a route would necessitate works being carried out on land outside the appeal site and not in the appellant's control. It would involve works to what I am told is part of the public highway. Although these 2 conditions are formulated in a negative way, and could therefore be consistent with the advice in paragraph 38 of the Annex to circular 4/1998, as I have concluded that such a delineated pedestrian route is not necessary in the

interests of highway safety, both the conditions fail the necessity test of the circular. I will therefore delete these 2 conditions.

14. I observed, as the appellant has pointed out, that the external faces of the appeal building have been relatively recently painted. The external alterations to the appeal building involved in the proposed development would be quite limited. They would be largely confined to the blocking-up of a small number of existing windows, and the creation of new window openings in the roof cladding at second floor level. I agree that, in the interests of visual amenity and the appearance of the building, it is necessary and appropriate for these works to be undertaken with finishes consistent with those of the building as existing. However, annotations on the approved elevation drawing, AM/857/07A, make clear that this is what is intended. It is not therefore necessary for a condition to be attached preventing commencement of the development until details of external paint finishes have been submitted to and approved by the planning authority. I will therefore substitute a condition requiring the new works/alterations to be finished in materials matching the adjacent part of the existing building.

### **Overall Conclusion**

15. The conversion of the vacant upper-floor accommodation at the appeal property to provide 8 flats is consistent with the relevant provisions of the development plan. No harm would be caused by the proposed development to privacy or in other terms. I therefore conclude that that planning permission should be granted for the appeal development.

16. It is appropriate and necessary to ensure that parking provision is made available, and retained, for the use of the occupants of the flats. A condition is also appropriate and necessary to ensure that the limited external physical works proposed are undertaken so as to match the existing appearance of the building. However, the detail of the requirements of the conditions attached to the planning permission granted by the council go beyond what is necessary. The requirements of conditions 2 and 3, regarding the creation of a defined pedestrian route, are also unnecessary. I have therefore deleted conditions 2 and 3 and substituted revised wording for conditions 1 and 4, as listed below.

*Rob Huntley*

Reporter

### **Appendix 1**

#### **The conditions appealed against**

1. All access arrangements shall be provided to the satisfaction of the Planning Authority in consultation with the Roads Authority prior to the occupation of any flat. For the avoidance of doubt the developer shall provide 12 No. car parking spaces including 2 No. disabled car parking spaces. All spaces shall be clearly delineated by appropriate road markings. The car parking area shall have a lockable access gate or other security feature

as may be agreed in writing by the Planning Authority, to maintain their use as private parking spaces in perpetuity.

*Reason: In the interests of road safety and for the avoidance of doubt.*

2. No development shall commence until the existing footway fronting the car park has been extended to the south east and south west joining with the existing footway which is located to the north west boundary of the commercial units. For the avoidance of doubt the developer shall provide plan details of the works prior to the commencement of development. The works shall be approved in writing by the Planning Authority in consultation with the Roads Authority.

*Reason: In order to provide a safe route for pedestrians between the car park and accommodation hereby approved in the interest of road safety.*

3. No other development shall commence until a delineated area between the end of the existing footway fronting the commercial units and the lane along the north west boundary of the site of application has been provided. For the avoidance of doubt, delineation of the pedestrian area shall be means of suitable textured surfacing and road makings which shall be shown on plan, to be agreed in writing by the Planning Authority in consultation with the Roads Authority.

*Reason: In order to provide a safe route for pedestrians between the car park and accommodation hereby approved in the interest of road safety.*

4. No development or work shall commence until details of all external paint finishes (incl. manufacturer product codes) have been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details. For the avoidance of doubt all elevations of the building shall be painted.

*Reason: In order to ensure that the infilled areas of windows match that of the entire building in the interest of visual amenity within the main village thoroughfare.*