

Planning and Environmental Appeals Division

## Appeal Decision Notice

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Decision by Nick Smith, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2229
- Site address: Invernairne Guest House, Thurlow Road, Nairn, IV12 4EZ
- Appeal by Mr Ryan Ireland against the decision by The Highland Council
- Application for planning permission 20/00312/FUL dated 23 January 2020 refused by notice dated 1 June 2020
- The development proposed: Erection of self-contained accommodation annex
- Application drawings: listed in schedule at the bottom of this decision notice
- Date of site visit by Reporter: 24 August 2020

Date of appeal decision: 24 September 2020

### Decision

I allow the appeal and grant planning permission subject to the six conditions listed at the end of the decision notice. Attention is drawn to the three 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. The development plan comprises the Highland-wide Local Development Plan (HWLDP) (2012), the Inner Moray Firth Local Development Plan (IMFLDP) (2015) and associated supplementary guidance. I consider each of the LDP policies, sections and supplementary guidance referred to me (below).

- HWLDP Policy 28 Sustainable Design
- HWLDP Policy 29 Design Quality and Place-making
- HWLDP Policy 30 Physical Constraints
- HWLDP Policy 31 Developer Contributions
- HWLDP Policy 43 Tourism
- HWLDP Policy 44 Tourist Accommodation
- HWLDP Policy 51 Trees and Development
- HWLDP Policy 57 Natural, Built and Cultural Heritage
- HWLDP Policy 64 Flood Risk
- HWLDP Policy 65 Waste Water Treatment
- HWLDP Policy 66 Surface Water Drainage
- IMFLDP (2015) Nairn Section
- Supplementary Guidance: Highland Historic Environment Strategy (January 2013)



- Supplementary Guidance: Physical Constraints (March 2013)
- Supplementary Guidance: Sustainable Design Guide (January 2013)
- Supplementary Guidance: Trees, Woodlands and Development (January 2013)
- Supplementary Guidance: Developer Contributions (November 2018)

2. Having regard to the provisions of the development plan the main issues in this appeal are the location, siting, design and materials proposed and the impact of the appeal proposal on amenity, trees and infrastructure.

### Location

3. The appeal site is garden land in a residential neighbourhood inside the Nairn settlement boundary defined by the IMFLDP (2015) page 65. Walking to the town centre and public transport links would take between 10 and 15 minutes. No evidence suggests the site to be at risk of flooding or any physical constraints identified in HWLDP Policy 30 or its associated supplementary guidance. No evidence suggests the appeal proposal to affect natural or cultural heritage designations.

### Trees

4. The council's Forestry Officer does not object to the proposed tree felling (including one that is dead), and removal of a shrub and a re-growing tree stump, provided that report of handling conditions 3, 4 and 5 are imposed. Were I to allow the appeal I would impose these conditions to ensure that works are carried out as proposed and to the appropriate standard, remaining vegetation is protected, and, that a replacement planting regime (as required by HWLDP Policy 51) is approved prior to development.

### Design and materials

5. The report of handling and the appellant's planning statement agree that the appeal proposal would cover around 10% of the hotel grounds. No evidence suggests this calculation to be incorrect. Such a scale combined with the proposed location would not, in my view, overwhelm the grounds or represent overdevelopment. I also measured the appeal site and am content that it can accommodate the appeal proposal based on the dimensions set out in the submitted plans.

6. The hotel dates from the Victorian era but is not listed or within a conservation area. Whilst Thurlow Road and other nearby streets include properties of a similar age, the hotel's immediate locality is modern; including properties finished in pebble-dash and timber. The appellant's planning statement references several nearby new, modern buildings/ extensions which I saw on my site inspection. Whilst these differ in size, design and location they, and my observations above, persuade me that modern buildings, such as the appeal proposal, are not out of place in this part of Nairn.

7. Report of handling paragraphs 8.7 to 8.9 adequately describe the appeal proposal's design and materials. No evidence suggests I should disagree with its findings, including those regarding compliance with the council's sustainable design guide supplementary guidance. The offsite manufacture and on site assembly would limit construction disturbance. Similarly use of ground screws would limit ground disturbance. The timber

finish of the appeal proposal would not appear substantively different from the timber parts of number 1 Thurlow Gate opposite to the west. Report of handling condition 2 would require the appellant to gain approval from the council for the proposed materials in advance of construction. Were I to allow the appeal I would impose this condition in the interests of retaining and/or protecting important elements of the existing character and amenity of the site.

### Amenity

8. The appeal proposal would be owner accommodation. It is not unusual for some hotels to also be their owner's residence or to have accommodation for overnight staffing. Report of handling condition 1 would ensure that the appeal proposal remains only for use as the owner's accommodation and cannot be used for holiday letting purposes or be occupied as a separate dwelling. Were I to allow the appeal I would impose condition 1 in the interests of amenity and to ensure the appeal proposal's direct relationship with the functioning of the hotel is retained.

9. The rear (southwest) elevation of the appeal proposal would be adjacent to the north (rear) boundary of number 17 Thurlow Road. I am content that the submitted evidence and my site inspection provided adequate understanding of the relationship between number 17, its garden and the appeal site. The window and glazed entry door on the appeal proposal rear elevation would be located on its eastern half closest to the hotel with the western half of the elevation being free of glazing. The remaining vegetation, boundary treatment, gradient and proposed hedge planting would screen much of this elevation from number 17. No evidence suggests that proposed vegetation removal would result in chemicals harming neighbouring gardens. As noted in paragraph 4 (above) conditions would be imposed to ensure works are carried out to the appropriate standard and that vegetation, besides that proposed for removal, is retained.

10. I was invited to view the appeal site from number 4 Thurlow Gate. However, I am content that the submitted evidence and the views across the rear elevation and garden of number 4 from the appeal site and from Thurlow Gate were adequate for the purposes of this appeal. The arc shape of number 4 Thurlow Gate means that its nearest windows (as seen from the appeal site) would be at oblique angles to the appeal proposal. The appeal proposal elevations facing number 4 do not include any windows or doors and would be partly screened by existing and proposed vegetation. The recessed veranda of the appeal proposal would face northeast (away from number 4) and views facing northwest from the veranda access door would be obscured from number 4 by the western end of the appeal proposal and current boundary vegetation.

11. I agree with the report of handling that the distances between the appeal proposal and the above two properties are not unreasonable from an amenity perspective. No evidence convinces me differently. Even with the proposed removal of vegetation TG6, the orientation and glazing arrangement of the appeal proposal and boundary treatments (including existing and proposed planting) would limit any privacy impacts at number 17 Thurlow Road and number 4 Thurlow Gate to acceptable levels.

12. The appeal proposal's veranda entry door would face towards number 1 Thurlow Gate. The proposed site layout plan suggests the distance between them to be in the order

of 40 to 50 metres. Having stood in Thurlow Gate and looked at the appeal site across the rear garden of number 4 and vice versa, I consider that number 1 would not be overlooked by the appeal proposal to any greater extent than it already is by number 4. I also noted that existing vegetation would limit any view from the appeal proposal veranda door north-westwards. Although the appellant would be content to accept a condition to screen this view I am satisfied that this is not necessary. This is because there would be sufficient distance between the appeal proposal and number 1 for amenity purposes.

13. Existing garden vegetation, distances and orientation of existing properties mean that Numbers 2 and 3 Thurlow Gate, Gowrie, Colinwood, Sutors View and Sanhame would not be overlooked by the appeal property to an extent that would adversely affect privacy or bring wider amenity concerns.

14. The report of handling proposes condition 6 to control lighting at the appeal proposal. Were I to allow the appeal I would impose this condition in the interests of amenity.

### Infrastructure

15. The appeal proposal would connect to the main public water and sewer network. The evidence indicates that the existing car park and access, water supply, waste water treatment and other infrastructure are capable of supporting the appeal proposal. Neither Scottish Water nor the council's roads team object. The council has not identified any need for developer contributions. I agree since the appeal proposal would be ancillary to the hotel business, as required by report of handling condition 1 which I would impose were I to allow the appeal. Developer contributions supplementary guidance Table 1.1 Contributions Matrix states that business development would not be subject to developer contributions. The appeal proposal would therefore comply with HWLDP Policy 31 and the associated supplementary guidance.

16. Report of handling paragraph 8.13 states that, following discussions, the appellant now intends to bury the drainage infrastructure that was proposed to run over the surface of the ground. Even were this not the case, the materials used could be controlled by report of handling condition 2. Detailed matters of the sewer connection would be for the appellant and Scottish Water.

### Siting

17. The appeal site is open to the northeast and is ostensibly outward looking. The appeal proposal would be orientated to take advantage of the view northeast. Whilst it would be partly visible from adjacent gardens and properties it would be largely hidden from public view on Thurlow Road and the promenade to the north. The size, timber finish, location, orientation, gradient and vegetation surrounding the appeal proposal would contribute to limiting its visual signature and amenity impact to an acceptable level. I would not, therefore, consider this to be a prominent site. Overall, the above factors suggest that the appeal proposal is sensitively sited.

18. The factors in the paragraphs above convince me that the appeal proposal would comply with HWLDP Policies 28, 29 and associated supplementary guidance, or could be made to do so through conditions. In so doing it would also accord with HWLDP

Policies 43 and 44 because it supports an existing tourism related business through provision of owner accommodation and no other policy conflicts are apparent provided conditions are imposed.

### Third parties

19. One third party supports the proposal. Others, including some neighbours object. The main concerns relate to amenity and proximity impacts, impacts on infrastructure (including sewer connections), trees and the implications of proposed design, materials and siting. I have considered each of these matters above and find no further third party evidence that persuades me to conclude differently.

20. The appellant disagrees with some third parties who argue that the site level has been raised. I cannot say for certain either way but, irrespective, I have considered this appeal based on the ground level that I saw on my site inspection. The appellant had left a step ladder, as shown on page 9 of his response to the council's appeal submission. That ladder had yellow tape to indicate the height of the appeal proposal (also shown on the same page of that document). I measured the height of that tape from the ground and found it to be a reasonable indicator of the appeal proposal height based on the dimensions presented in the submitted plans. I am therefore content that I have fully understood the height implications of the appeal proposal and find no additional evidence to suggest I should reach different conclusions to those in the paragraphs above.

21. Some third parties are concerned about the potential for noise from the appeal proposal. Construction noise would be temporary and limited further by proposed offsite manufacture and resultant limited time for on-site assembly. Operational noise would be domestic residential noise since report of handling condition 1, in the event of allowing the appeal, would prevent holiday rental or separate residential use. Noise impacts are, therefore, likely to be minimal and I agree with the report of handling that they would not be controllable through conditions. As such it would be for the appropriate authorities to handle any noise complaints in the normal manner.

### **Conclusions**

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.

*Nick Smith*

Reporter

### **Schedule of Plans and Drawings approved**

000001 REV 1 Location plan

000002 REV 1 Proposed site layout plan  
000003 site layout plan - service routing plan  
000004 REV 1 Site section plan  
000005 REV 1 Elevation plan - view from north west  
000006 REV 1 Elevation plan - view from west  
000007 REV 1 Elevation plan - view from south west  
000008 REV 1 Elevation plan - view from south east  
000009 REV 1 Elevation plan - view from north east  
000010 REV 1 Elevation plan - view from north  
000011 REV 1 Floor plan  
000012 REV 1 Foundation plan  
000013 Site layout plan  
Annex elevations

### Schedule of Conditions

**1.** The self-contained annex accommodation hereby approved shall be used as owners' accommodation for Invernairne Guest House only, and shall not be used for holiday letting purposes, and at no time shall it be occupied as a separate dwelling.

**Reason:** To ensure that the development does not become used for permanent residential occupation in the interest of the area's visual amenity, in recognition of the lack of private amenity space and in accordance with the use applied for.

**2.** No development or work shall commence until a detailed specification for all proposed external materials and finishes (including trade names and samples where necessary) has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details.

**Reason:** In order to retain and/or protect important elements of the existing character and amenity of the site.

**3.** Prior to any site excavation or groundworks, all retained trees are to be protected against construction damage using protective barriers located as per the Tree Protection Plan and Arboricultural Method Statement (AMS) and in accordance with BS5837:2012 Trees in Relation to Design, Demolition & Construction. Barriers are to remain in place throughout the construction period and must not be moved or removed without the prior written approval of the Planning Authority.

**Reason:** To ensure the protection of retained trees throughout the construction period.

**4.** A suitably qualified arboricultural consultant must be employed by the applicant to ensure that the Approved Tree Protection Plans are implemented to the agreed standard. Stages requiring arboricultural supervision are identified in the AMS and certificates of compliance for each stage are to be submitted for approval.

**Reason:** To ensure the protection of retained trees throughout the construction period.

**5.** No development shall commence until a Tree Planting Plan and maintenance programme has been submitted to and approved by the planning authority. The Tree Planting Plan shall be implemented in full during the first planting season following commencement of development or as otherwise agreed in writing by the planning authority.

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

**6.** No development shall commence until full details of any external lighting to be used within the site and/or along its boundaries and/or access have been submitted to, and approved in writing by, the Planning Authority. Such details shall include full details of the location, type, angle of direction and wattage of each light which shall be so positioned and angled to prevent any direct illumination, glare or light spillage outwith the site boundary. Thereafter only the approved details shall be implemented.

**Reason:** In order to safeguard the amenity of neighbouring properties and occupants.

### 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 (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).