Agenda Item	6.4	
Report No	PLS-19-22	

HIGHLAND COUNCIL

Committee:	South Planning Applications Committee
Date:	22 March 2022
Report Title:	21/05206/FUL: Esther Botha
	The Viewmount, East Terrace, Kingussie, PH21 1JS
Report By:	Area Planning Manager – South

Purpose/Executive Summary

- **Description:** Landscape engineering works to form garden terraces and erection of retaining wall structures (retrospective)
- Ward: 20 Badenoch and Strathspey

Development category: Local

Reason referred to Committee: Community Council objection

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **GRANT** the application as set out in section 11 of the report

1. PROPOSED DEVELOPMENT

- 1.1 This is an application, in retrospect, submitted in response to a breach of planning control complaint. The works remain incomplete following contact from the Enforcement Team advising that a retrospective planning application be submitted for consideration.
- 1.2 The proposal includes the following elements:
 - construction of a large concrete block retaining wall facing towards East Terrace topped with a guard rail
 - sleeper walls within the garden
 - engineering and remodelling works to the garden
 - upgraded driveway from East Terrace and parking provision
 - upgrading work to the house
- 1.3 There is an existing access from East Terrace with off-street parking along the eastern elevation of the property. Parking provision for 7 cars is provided with additional drop off space to the principal elevation of Viewmount. The proposal will widen the access with timber retaining walls installed either side. The Bed and Breakfast is already connected to the public water supply and sewer.
- 1.4 Pre-Application Consultation: None
- 1.5 Supporting Information: Planning Statement, visualisations, site photos.
- 1.6 Variations: None

2. SITE DESCRIPTION

2.1 The site is located in an established residential area of Kingussie, with many of the houses being Victorian or Edwardian era villas, interspersed with more modern infill housing. The house, Viewmount, is a large villa which is used for Bed and Breakfast, and it is set within a large garden that slopes down towards East Terrace to the southeast. The site is enclosed by a partially complete precast concrete block wall set above the natural stone wall adjacent to East Terrace.

3. PLANNING HISTORY

3.1	21.09.2021	21/00504/ENF – Unauthorised development	Retrospective planning application required
3.2	02.07.1999	99/00061/FULBS - Change of use of ground floor to restaurant	Planning Permission Granted

3.3 The property has been used as tourist accommodation for some time, operating as the Auld Alliance Bed and Breakfast and the Kingussie SYHA Youth Hostel.

4. PUBLIC PARTICIPATION

4.1 Advertised: Unknow Neighbour

Date Advertised: 25.11.2021

Representation deadline: 09.12.2021

Timeous representations: 7 objections from 7 households; 6 support comments from 6 households; 1 neutral comment from 1 household

Late representations: 1 objection from 1 household

4.2 Material considerations raised are summarised as follows:

Representations against:

- a) Non-compliance with the Development Plan and planning policy;
- b) Inappropriate scale, design and materials;
- c) Detrimental impact on amenity and privacy;
- d) Concerns regarding flooding, surface water drainage, water run-off;
- e) Inappropriate landscaping;
- f) Potential for noise;
- g) Inappropriate lighting.

Representations in support:

- h) Compliance with the Development Plan and planning policy;
- i) Appropriate scale, design and materials;
- j) Negligible impact on amenity and privacy;
- k) Negligible impact from surface water drainage/water run-off;
- I) Improved landscaping works.
- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet <u>www.wam.highland.gov.uk/wam</u>.

5. CONSULTATIONS

- 5.1 **Kingussie and Vicinity Community Council**: Object on the following basis:
 - consider additional vegetation would help screen the concrete wall further
 - additional lighting should not detrimentally impact neighbour amenity and should be for practical purposes only
 - upgraded driveway and landscaping should not increase flood risk to neighbouring properties
 - noise from residents using the outdoor space late at night
- 5.2 **Highland Council Enforcement Team**: No further comments. Visited the site on 21 September 2021, advised applicant investigating a reported planning breach. Advised applicant to halt development on site and submit a retrospective planning application.
- 5.3 **Cairngorms National Park Authority**: No call in.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Cairngorms National Park Local Development Plan 2021

2 – Supporting economic growth
3 - Design and placemaking
9 – Cultural heritage
10 - Resources
Strategic Settlement: Kingussie

7. OTHER MATERIAL POLICY CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

Scottish Planning Policy (as amended December 2020)

8. PLANNING APPRAISAL

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

- 8.3 The key considerations in this case are:
 - a) compliance with the development plan and other planning policy
 - b) design and materials
 - c) amenity
 - d) drainage
 - e) any other material considerations

Development plan/other planning policy

8.4 The site is located within the Kingussie settlement boundary as defined within the Cairngorms National Park Local Development Plan (CNPLDP). Policy 2 of the Development Plan applies for tourist accommodation and the upgrade of associated facilities where proposals will have no detrimental impact on amenity, are compatible/complementary with the existing business activity and support/contribute to a year-round economy. This has to be balanced with Policy 3, which requires proposals to be sympathetic to the traditional pattern and character of the surrounding area, local vernacular and local distinctiveness, whilst encouraging innovation in design and use of materials along with landscaping that complements

the setting. Similarly, Policy 9 requires development that affects a site of local historic interest to conserve and enhance its setting where possible and take reasonable measures to minimise and mitigate any adverse effects. Additionally, the proposal must demonstrate that the amenity and privacy enjoyed by neighbours is protected and that disturbance is minimised and is also given due consideration. Policy 10 notes that development should not increase the risk of flooding outwith the site.

- 8.5 The Development Plan guidance for Policy 3 in particular notes that new development does not need to copy past styles. Whilst new development should reflect traditional materials and workmanship evident within the Cairngorms National Park there is scope for innovation, contemporary design and modern methods of construction. A balance is to be struck between sourcing materials locally and bringing in specialised products which will optimise the sustainability and long-term performance of the development.
- 8.6 The application has attracted an objection from the Community Council and a number of representations against the proposal principally on design, materials and amenity grounds which require further detailed consideration.

Design and materials

- 8.7 The applicant's agent has submitted a Planning Statement in support of the application. The building has an established use as tourist accommodation having previously been used as the Auld Alliance Bed and Breakfast, and Kingussie SYHA Youth Hostel, some time before that, with owner's accommodation to the rear. The internal modernisation and fitting out works to the building would provide for a 4-bedroom boutique Bed and Breakfast; effectively the building would operate as a small hotel under its established use, with integrated and self-contained owners' accommodation.
- 8.8 This residential part of Kingussie generally offers contrasting styles of properties either side of East Terrace. To the northwest the housing is generally characterised as large, Victorian/Edwardian villas set high above the public road within substantial sloping garden ground. Whilst this property, along with the other villas on this side East Terrace, are not listed, they are of local historic interest.
- 8.9 To the southeast the housing is generally characterised as smaller, more modern properties at or below road level, with the garden ground sloping away from the public road. There is less uniformity on this side of East Terrace with a mixture of parking spaces along with walls, railings and fencing in a variety of materials and styles.
- 8.10 It should be noted that the applicant has undertaken a considerable amount of modernisation and upgrading works to the building and to the grounds. Some of these works may not have been development that is to say that no planning permission was required for them. However, various other aspects do require planning permission, and unravelling the overall works into what does, or does not require planning permission, has not been straightforward, largely due to the overall scale of the development, and establishing the planning status of the building.

- 8.11 The works are currently incomplete. The new large concrete block retaining wall at the front of the house appears somewhat stark. This is emphasised further by the position of the site above the main public view of the site from East Terrace, and the previous cut back of the mature trees between the new wall and East Terrace. In addition, the remodelling garden groundworks are all new and fresh and have not had any time to 'green-up' and soften with a season of growth.
- 8.12 The works to the principal elevation will create an upgraded access for guests, which was considered substandard, along with associated engineering works and retaining walls/boundary enclosures. The supporting information notes that the approximately 2m high concrete wall, made up of 1.5m by 0.6m by 0.6m blocks, was chosen for its strength as a retaining wall and safety barrier to the upgraded access. The scale is necessary given the gradient and levels in the garden. As well as offering a functional purpose, the Planning Statement notes the pre-cast concrete provides a modern contrast to the Victorian villa and avoids pastiche of the existing design and materials of the Bed and Breakfast.
- 8.13 As noted, the works were stopped prior to their completion with further mitigation measures to be implemented including ornamental detailing attached to the retaining wall, along with planters along its length, and additional planting above the wall. These details will, over time, soften the currently stark concrete. The concrete wall will be surrounded by a gravel chip walkway and lighting along the length of the structure. The wall continues along the principal elevation with an enclosed seating area in the south eastern portion of the garden ground with a southern outlook beyond East Terrace.
- 8.14 The access has been widened to 3.5m and will be enclosed by 1.2m and 0.6m high timber retaining walls and kerb stones on either side of the driveway. The increased size of the driveway by approximately 1m. Elsewhere within the site, landscaping works will create a 3-tiered garden space connected via staircases made up of 2.4m by 0.1m by 0.2m timber sleepers. Significant planting will be undertaken within the tiered garden.
- 8.15 The concrete wall on the principal elevation facing East Terrace is a large and significant structure. It is an unambiguously modern structure, contrasting with the established period walling of the Victorian or Edwardian era villas in the area. The blocks are stark compared to the much smaller random stone used for the original garden walling.
- 8.16 The new walling has attracted most concern raised in the representations. Whilst the wall utilises a modern aesthetic in contrast to the original villa, on balance, the walling is considered acceptable in terms of its scale, design and materials once the proposed planting mitigation measures have been installed. Although these will take time to establish, it is considered that in due course they will help to soften the massing and scale of the wall. Conditions are proposed in relation to the planting measures.

Amenity

8.17 A number of representations considered the planning application would have a detrimental impact on neighbour amenity with the potential for overlooking, loss of

privacy, noise and lighting all having an impact on neighbouring properties. The main focus of representation is on the proposed seating area in the south eastern corner of the garden ground enclosed by the concrete wall. The closest properties to this area are Craigview, Alturlie and Daytona Court across East Terrace to the south with approximately 21m, 32m and 41m separation distance respectively. Ruthven View and Ardgowan are on the same side of East Terrace with approximately 23m and 27m separation distance respectively. This seating area is recessed within and at the base of the wall. This screens it from housing to the east and west.

- 8.18 On first impression, it is slightly unusual to have a seating area in this part of the grounds set back from the public road; the more obvious location would appear to be within the tiered garden in closer proximity to the property. Irrespective of the unorthodox location, there is considered to be sufficient separation between the neighbouring properties noted above to maintain existing neighbour amenity. Additionally, the Planning Statement correctly notes that the applicant and guests could use this part of the garden for seating regardless of the outcome of this planning application. The placing of non-fixed and temporary furniture does not require the benefit of planning permission and as such could be placed on any part of the garden, including the grassed area fronting the application site.
- 8.19 A number of representations including from the Community Council raised concerns regarding noise from occupants of the Bed and Breakfast, and in particular noise late at night. While these are legitimate concerns it is not considered that conditions attached to a grant of planning permission is the appropriate tool to control what amounts to anti-social behaviour. Such powers lie with Police Scotland and/or Environmental Health should disturbance become a statutory nuisance.
- 8.20 Additional low-level lighting is to be installed along the garden perimeter with East Terrace, concrete wall, timber retaining walls, garden staircase, access and adjacent to the parking bays. The Planning Statement notes the lighting is of a domestic nature and scale installed for security, safety, and aesthetic reasons. The specification is for a low illumination level that would not cause any significant external impact. Whilst some details have been included in the Planning Statement, a condition could be used to control the angle of direction and wattage of each light amongst other information.

Drainage

8.21 In terms of surface water drainage, representations suggest that the proposed development could lead to surface water run-off. The access and landscaping upgrades are generally to the existing infrastructure with the addition of the walls. A condition is recommended in relation to full details of a SUDS compliant surface water drainage system being provided which takes account of not just the hard surface run-off within the site, but also surface water originating from outwith the site. Significant naturally draining garden ground will be retained within the site so there is no reason to assume that a surface water drainage solution cannot be found for the property, as it has been for neighbours.

Other material considerations

8.22 In addition to representations submitted against the proposal, a number of representations supporting the development were submitted. The comments generally considered the proposal improved the site, would benefit the local economy and complied with the Development Plan.

Non-material considerations

8.23 None

Matters to be secured by Legal Agreement / Upfront Payment

8.24 None

9. CONCLUSION

- 9.1 All relevant matters have been taken into account when appraising this application.
- 9.2 The proposal involves the significant remodelling of the grounds of the building, and works to upgrade the building, which has a current commercial use as a Bed and Breakfast. These groundworks in particular are of a significant scale and extent and alter the long-established status quo on site.
- 9.3 The groundworks, and especially the new concrete wall to the principal elevation facing East Terrace and its associated garden remodelling, result in a large and significant structure. This contrasts with the established, smaller, lower, and more refined period walling found at other period housing in the immediate area.
- 9.4 The applicant has indicated that they intend to undertake significant planting throughout the site, along with the introduction of decorative panelling and planters to soften the visual appearance of the wall from East Terrace, and that this can be controlled by condition.
- 9.5 Notwithstanding this, the undertaking of significant physical change to the grounds of the building over a short period of time is, understandably, a matter of concern to neighbours and the wider community. However, during discussion with the applicant, it has become apparent that the works are part of an overall package of significant upgrade at the building to allow it to continue to function as a commercial property into the future.
- 9.6 The Development Plan promotes economic development that enhances tourism facilities, balancing this alongside the adoption of good design and use of materials appropriate to the area with neighbour amenity and privacy maintained. It is considered that matters raised in representation can be mitigated by conditions and make the proposal acceptable in accordance with Development Plan policy.

10. IMPLICATIONS

10.1 Resource: Not applicable

- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. **RECOMMENDATION**

Action required before decision issued	Ν
Notification to Scottish Ministers	Ν
Conclusion of Section 75 Obligation	Ν
Revocation of previous permission	Ν

Subject to the above actions, it is recommended to **GRANT** the application subject to the following conditions and reasons:

1. No further development or work shall commence until a detailed specification for all the proposed external mitigation measures (including materials, finishes, trade names, RAL codes 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.

2. No further development shall commence until full details of all 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.

3. No further development shall commence until full details of all surface water drainage provision within the application site (which should accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Fourth Edition, or any superseding guidance prevailing at the time) have been submitted to, and approved in writing by, the Planning Authority. Thereafter, only the approved

details shall be implemented, and all surface water drainage provision shall be completed prior to the first occupation of any of the development.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

INFORMATIVES

Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit a notice to the Planning Authority upon completion of development. This is in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notice referred to are attached to this decision notice for your convenience.

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks and Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <u>http://www.highland.gov.uk/yourenvironment/roadsandtransport</u>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads and pavements/101/permits for wor king on public roads/2

Mud and Debris on Road

Please note that it an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact <u>env.health@highland.gov.uk</u> for more information.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species

Signature:	David Mudie		
Designation:	Area Pla	anning Manager - South	
Author:	Roddy Dowell		
Background Papers:	Documents referred to in report and in case file.		
Relevant Plans:	Plan 1 - Location Plan 000001		
	Plan 2	- Site Layout Plan 000002	
	Plan 3	- Site Plan 0100.DWG.103 REV P1	
	Plan 4	- Location Plan 0100.DWG.100 REV P1	
	Plan 5	- Proposed Site Layout Plan 0100.DWG.101 REV P2	
	Plan 6	- Construction Plan 0100.DWG.102 REV P1	









NOTES General notes 1. Site location is The Viewmount, East Terrace, Kingussie, PH21 1JS

LEGEN	ND			
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P1	JB	JB	11/21	Issued for planning
P0	JB	JB	11/21	Issued for clients comments
Revision	Ву	Chk'd By	Date	Comments
		eri eeri	<u>DK</u>	Corebrook Engineering Limited Upper Yetts near Dollar Clackmannanshire FK14 7JU www.corebrook.co.uk
Client The Vi	ewmour	nt Limited	ł	
Project Propos	sed exte	rnal infra	astructu	re improvements
11	locati	on pla range		
Scale As show	'n		Dat No	e v '21

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0100.DWG.100

Revision **P1**

Drawing Number



NOTES

General notes 1. All works are the be in accordance with the Specification for Highway Works, October 2021 edition, and the National Road Development

Guide August 2015 edition. 2. All existing levels shall be confirmed on site prior to construction.

3. This drawing has been prepared for planning and building warrant approval purposes only and may require revision and/or augmentation for construction purposes.

LEGEND

------ Site boundary

Low voltage subtle lightingHB Half battered kerb

P2	J
P1	J
P0 Revision	E
CO eng	re
Client The Vi Project Propos	
Drawing Prop) Title
Scale As show	
Drawing I	Numl

P2	JB	JB	11/21	Parking bay layout amended and issue for planning
P1	JB	JB	11/21	Issued for planning
P0	JB	JB	11/21	Issued for clients comments
Revision	Ву	Chk'd By	Date	Comments
Corebrook Corebrook Engineering Limited Upper Yetts near Dollar				
engineering Clackmannansh FK14 7.				
www.corebrook.co.uk				
Client The Viewmount Limited				
Project Propos				
	sed exte	rnal infra	astructu	re improvements
Drawing	Title	ernal infra		

cale s shown Date Nov '21 rawing Number 0100.DWG.101 For planning approval

Revision **P2**

