



Appeal Decision Notice

Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2267
- Site address: The Viewmount, East Terrace, Kingussie, PH21 1JS
- Appeal by Esther Botha against the decision by The Highland Council
- Application for planning permission 21/05206/FUL dated 04 November 2021 refused by notice dated 28 March 2022
- The development proposed: landscape engineering works to form garden terraces and erection of retaining wall structures (retrospective)
- Application drawings: Site Layout Plan 000001; Site Layout Plan 000002; Location Plan 0100.DWG.100 Rev. P1; Site Layout Plan 0100.DWG.101 Rev. P2; General Plan 0100 DWG.102 Rev P1; Site Layout Plan 0100.DWG.103 Rev. P1.
- Date of site visit by Reporter: 05 September 2022

Date of appeal decision: 23 September 2022

Decision

I allow the appeal and grant planning permission subject to the two conditions listed at the end of the decision notice.

Preliminary matters

The appellant has made an expenses claim against the council in relation to its decision to refuse planning permission. I have dealt with that matter in a separate notice.

There is also a parallel appeal (reference ENA-270-2267) against an enforcement notice served by the council in connection with the same works that are the subject of this appeal. That appeal, together with the appellant's expenses claim in relation to the enforcement case, are also the subject of separate decisions.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The adopted development plan in this case is principally comprised of the Cairngorms National Park Local Development Plan 2021 (the LDP). Having regard to the provisions of the development plan the main issues in this appeal are the effects of the development on the character and amenity of the area.

2. The property is actively being used as a guesthouse, which is consistent with both the site's planning history and its previous use under different ownership. The appellant's statement of case also emphasises that these works have been undertaken to improve the quality of the tourist accommodation, rather than this relating to domestic improvements. I am satisfied that none of the works which have been undertaken (or which are still

proposed) benefit from permitted development rights afforded to dwellinghouses on this basis.

3. The full extent of the works therefore fall to be assessed against the relevant provisions of the LDP. The council's reason for refusal refers to LDP policy 3 ('Design and placemaking'), and specifically parts 3.3(b) and (c) of the policy. Part 3.3(b) states that "developments must 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". Part 3.3(c) requires the use of materials and landscaping that will complement the setting of development. Having reviewed the scope of other LDP policies, I am satisfied that the foregoing provisions of policy 3 are the most salient to my assessment of the main issues in this appeal.

4. The curtilage of the appeal site slopes steeply down from north to south, towards East Terrace. The completed works have involved the re-grading of land to form a series of terraced lawns. Retaining structures have also been built to accommodate a widened driveway, parking and seating areas.

5. The focus of the council's reason for refusing planning permission, and as reflected in its appeal submissions, is in regard to the substantial retaining wall constructed using interconnecting concrete blocks, which is parallel to and elevated above the original stone boundary retaining wall on East Terrace. This is also the main component of the development which has attracted third party objections. These concerns are principally centred on the scale, character and appearance of the wall being inappropriate to its context.

6. During my site inspection I did not find the overall height or position of the wall to be problematic. It is both set back from East Terrace and positioned behind a row of mature trees, which together assist in reducing the overall dominance of the wall, despite it being a substantial structure in an elevated position relative to the road. I paid attention to the effects of the wall from the front door of the property 'Craigview' on the opposite side of the road, which is downslope from the appeal site and East Terrace. Despite the notable difference in levels, I do not consider the wall to have any overbearing effects upon this (or any other) property given the separation distance.

7. In my opinion however, the form of the concrete retaining wall currently contrasts rather starkly with the otherwise more natural palette of materials throughout the site. The guesthouse itself is of a traditional stone and slate construction and design, whilst the other components of the appeal development principally utilise a combination of timber sleepers to provide retaining structures and steps, together with 'softer' landscaping and ground works to alter the profile of the site. In this context I find the use of large-scale interlocking concrete blocks to be a somewhat unsympathetic approach, which jars with the traditional character and appearance of the guesthouse building, its original stone boundary wall, and the wider choice of materials used throughout the rest of the site.

8. The appellant has drawn my attention to the variety of designs and materials used on other buildings both in the immediate locality and further afield. I am also mindful that the works are very recent, incomplete and consequently somewhat starker than will likely be the case with the passage of time. This does not alter my finding however that, in its current finish, the concrete wall significantly detracts from the character and appearance of East Terrace, contrary to LDP policy 3.

9. Given my earlier finding that the overall height and scale of the wall is appropriate, the only aspect of the wall which falls short of what is appropriate is the character and appearance of the choice of material. It seems to me that this is a matter which is capable of being remedied in a relatively straightforward way. The council has outlined conditions which, in the event of the appeal being allowed, it requests are imposed as part of the consent. One of these suggested conditions would require details of 'external mitigation measures' to be submitted and approved.

10. With some revisions to the precise wording of this condition in the interests of clarity, I consider this approach would enable an appropriate finish or other mitigation measures to be secured. I note that the appellant proposes to mount decorative panels to the wall. However, there may be other options which would more successfully integrate the wall into the site and its surroundings, and which ought to be explored. It is therefore desirable for the condition to offer flexibility over what may ultimately be deemed to be an acceptable finish or approach. Other options could, for example, involve stone-facing, timber boarding, cladding, render, or a combination of approaches. In my view it is likely that more than one option may be suitable, but that is a matter which is appropriate for the council to determine in due course.

11. Subject to measures being implemented as required by this condition, I am satisfied that the character and appearance of the wall would satisfy the requirements of LDP policy 3. I am also satisfied that the wider works which fall within the scope of this appeal are sympathetic to the site and its immediate surroundings and I see no need to require wider mitigation measures of this type for any other components of the development.

12. Concerns regarding the potential for noise disturbance and a loss of privacy have been raised in representations, particularly in regard to the relationship between the seating area formed in the southeast corner of the site relative to the nearest neighbouring property, Craigview. Whilst I appreciate the reasons for these concerns, regardless of the outcome of this appeal there would be no restrictions on which parts of the garden could or could not be used for seating. The works undertaken are clearly intended to enable the use of this part of the garden by guests, but it is not within the scope of this appeal to consider the potential effects of its use in this way, as a material change of use of the land is not proposed. The use of this part of the garden for seating is not reliant on the development for which retrospective consent is being sought, and the potential for overlooking and disturbance would have existed prior to the development taking place; this is a consequence of the relative proximity of the two properties and the difference in levels between them.

13. A lighting scheme is proposed. The council has requested that details of any lighting should be required to be submitted and approved, as a condition of any consent, in order to ensure that it does not give rise to any adverse effects upon residential amenity. Having reviewed the submitted details of the proposed lighting, which comprises of low-intensity soft ambient and directional feature lighting (rather than higher intensity security or flood lighting) I am satisfied that it would not affect amenity at neighbouring properties. East Terrace has street lighting and many properties on the road have external lighting of one form or another. Therefore it would not be introducing lighting into an otherwise entirely dark environment. I do not consider a condition to be necessary on this basis.

14. Reference has been made in representations to the risk of flooding of properties on the south side of East Terrace, downslope from the appeal site. In periods of heavy rainfall, surface run-off would naturally accumulate on the road and take the path of least resistance downhill, which inevitably may affect properties lower down. There is nothing before me to

demonstrate that this situation has been exacerbated by the works that are the subject of this appeal. However, it is good practice as part of any engineering works to consider how surface water flows may be altered and managed. The council's suggested condition on this matter is justified and appropriate, subject to a minor revision in the interests of clarity and enforceability.

15. Concern raised in regard to the structural integrity of the retaining walls is not a material consideration. Representations have noted that there have been some tree works including felling on the site, but this would only require consent in particular circumstances, none of which apply in this case.

16. I note that alongside the objections to the development, to which I have already had regard, there have also been numerous representations received in support of the proposals. Amongst other matters, these emphasise the importance of supporting a local business and investment being made in local visitor facilities. Reference has also been made to the tired condition of the property prior to various works being undertaken. The appellant has similarly emphasised these points. LDP policy 2 ('Supporting economic growth') supports proposed improvements to tourist facilities in part 2.3, with part 2.4 supporting proposals which enhance the range and quality of facilities. However, this support is not unqualified; it is subject to the express requirement that it would have no adverse environmental or amenity impacts on the site or neighbouring areas.

17. The appellant has also attached weight to the position of the Cairngorms National Park Authority, which decided to not use its call-in powers on the basis that the proposal does not raise any planning issues of general significance to the park aims. However, it would be a misinterpretation to view the National Park Authority's response as an indication of the proposal's acceptability. In this case, the effects are highly localised and I agree with the National Park Authority that there would be no wider implications for the national park. That does not in itself mean a development would be in accordance with the LDP; a proposal can still legitimately be found to be contrary to the LDP and/or be found to be unacceptable overall despite not having been called-in by the National Park Authority.

18. All told however, subject to the conditions outlined and, in particular, the implementation of measures to remedy the current unsatisfactory appearance of the concrete wall, I find the works do comply with policies 2 and 3 of the LDP. I therefore conclude, for the reasons set out above, that the 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. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Christopher Warren
Reporter

Conditions

1. Notwithstanding the plans hereby approved, no further development shall take place until a detailed specification for the final finished appearance of the interlocking concrete block wall (including materials, finishes, trade names, RAL codes and samples where necessary) has been submitted to, and approved in writing by, the Planning Authority. Thereafter only the approved details shall be implemented and they shall be completed in full within six months of the date of the written approval.

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

2. Notwithstanding the plans hereby approved, no further development shall take place 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 in full within six months of the date of the written approval.

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