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Mr M Harvey
Highland Council
Sent By E-mail

Our ref: PPA-270-2291
Planning Authority ref:23/01144/FUL

29 January 2024

Dear Mr Harvey

**PLANNING PERMISSION APPEAL: PORTREE HOTEL SOMERLED SQUARE
PORTREE IV51 9EH**

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/>.

DPEA is continuing to look at how we can improve the services we deliver and welcomes contributions from all those involved. In this regard I would be grateful if you could take five minutes to complete [our customer survey](#).

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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





Appeal Decision Notice

Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2291
- Site address: Portree Hotel, Somerled Square, Portree, IV51 9EH
- Appeal by Campbell Dickson against the decision by Highland Council
- Application for planning permission 23/01144/FUL dated 7 March 2023 refused by notice dated 14 August 2023
- The development proposed: retention of outdoor seating area (previous permission 20/02709/FUL)
- Date of site visit by Reporter: 15 January 2024

Date of appeal decision: 29 January 2024

Decision

I dismiss the appeal and refuse planning permission.

Preliminary

My assessment does not consider whether the proposal is permitted development under Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As amended). As the appellant has made an application for the proposed development, I am determining whether or not planning permission should be granted.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The statutory development plan for the site comprises the National Planning Framework 4 (NPF4), the Highland Wide Local Development Plan (HwLDP) and the West Highlands and Islands Local Development Plan (WestPlan). The Highland Historic Environment Strategy (2013) is supplementary guidance which also forms part of the statutory development plan.
2. As the site lies in the Portree Conservation Area, I am required by Section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
3. The appeal relates to retrospective planning permission for construction of a platform with railings for outdoor seating adjacent to the west elevation of the Portree Hotel, on the east side of Somerled Square. Having regard to the provisions of the development plan, the main issues in this appeal are: the visual effects, including effects on the character or appearance of the conservation area; and effects on pedestrians, road safety and parking.

4. The council considers that the proposal is contrary to policies 14 (Design, quality and place) and 30 (Tourism) of NPF4, policies 28 (Sustainable Design), 29 (Design Quality and Place-Making) and 43 (Tourism) of HwLDP and the placemaking priorities for Portree identified in WestPlan. It considers that the proposal is detrimental to the amenity of the village centre and inconsistent with the six qualities of successful places.

Visual effects, including effects on the character and appearance of the conservation area

5. In terms of the visual effect, with the removal of the pods, I consider that the platform and railings do not look entirely out of place here. There are a range of different railing designs around the square. Depending on the viewpoint, the view to the front elevation of the Portree Hotel is partly screened by trees, the bus shelter, the war memorial and from time to time by buses parked in the stances. This means that the structure is not overly prominent.

6. However, I consider that in close views, the material of the railings is not consistent with the general use of traditional materials elsewhere in the conservation area. Similarly, the use of timber on the base of the platform looks temporary and is not sympathetic to the conservation area. The council's Historic Environment Team suggests that the decking elevations be painted dark grey or black. If I were minded to approve the scheme, it would have been possible to attach a condition to require changes to the materials or colours used, supporting its location in the conservation area.

7. NPF4 policy 7(d) and HwLDP policy 57 relate to development in conservation areas. NPF4 policy 14 does not support proposals that are poorly designed, detrimental to amenity or inconsistent with the six qualities of successful places, as set out in the policy. Subject to conditions on materials and colour, I consider that the qualities of 'pleasant' and 'distinctive' would be met. I discuss the quality 'connected' below. I consider that the other qualities of 'healthy', 'sustainable' and 'adaptable' are not directly relevant in this case.

8. In terms of the economic elements of NPF4 policy 30, I note the supportive petition. The development might increase the spending of those arriving into the square but it may also compete with rather than complement other tourist facilities. Nevertheless, I accept that it would be beneficial to the Portree Hotel itself. I deal with the transport and parking elements of that policy, including disabled access, below.

9. In terms of HwLDP policies 28 and 43, given my findings above, there is no major conflict with parts of the policy that relate to the scale of the development and the effects on built and cultural heritage features. However, while the proposal is within the settlement boundary, the economic benefits are again more difficult to quantify and there is insufficient evidence to say that it would increase the length of visitors' stay or complement other tourist facilities. Policy 43 points towards the area LDPs setting out the need for coordinated approaches to tourism, which I discuss further below, alongside discussion on the transport and accessibility aspects of policy 28.

10. In light of the above, subject to conditions, the visual effects of the proposal would be consistent with the relevant parts of NPF4 policy 14 and LDP policies 28 and 43. I am satisfied that the character and appearance of the conservation area would be preserved, in line with NPF4 policy 7 and HwLDP policy 57 and that there would be no conflict with the Highland Historic Environment Strategy. The proposal would achieve some, but not full, support from NPF4 policy 30 and HwLDP policy 43.

Effects on pedestrians, road safety and parking

11. The council considers that the proposal is incompatible with public service provision including safe operation and maintenance of the public road. The council's Transport Planning Team indicates that giving up public road space for the proposal is not justified and (separate) consent for this will not be given. However, this is distinct from my assessment of the planning matters. The granting or otherwise of planning permission does not remove the need for other consents, nor does it imply that such consents will be forthcoming.

12. The evidence suggests that there is currently high traffic (buses and cars) and pedestrian footfall in the town centre in the summer months and a lack of safe crossings. Discussions appear to be ongoing around longer term plans for the square, linked to WestPlan's placemaking priorities for Portree, which include improvements in parking and bus drop-off provision in the village centre.

13. In terms of the safe operation of the road, the council and bus operators are concerned that the platform creates an actual or perceived reduction in the space available for buses to turn into their stances in Somerled Square. On my site inspection, I observed buses arriving at the square, passing the platform as they turned in to the bus stances. There is very little space between the buses and the platform, particularly when turning into the first or second stance. However, this is essentially a difference between the effect of the current structure in this location and the previous scenario where vehicles were parked in the space. Given that buses could similarly be at risk of coming very close to or hitting parked vehicles, I do not find that the structure constitutes a significant difference from the previous scenario that would, on its own, justify refusal.

14. Concerns are raised about an actual or perceived reduction in the width of the pavement between the structure and the front of the hotel. I observed two pedestrians walking along this stretch of pavement, not quite able to walk side by side. The pavement appears narrow here, exacerbated by the tunnel effect of the base of the platform and the platform railings, fairly close to and opposite the wall of the hotel.

15. It is likely that pedestrians and/or those with buggies or wheelchairs turning left from Wentworth Street into the square and faced with people already on the stretch of pavement by the platform would either swing out past the structure onto the road to head south, or try to cross to the centre of the square. In both cases, this would occur at a very wide point in the road, with no formal crossing, where buses and other vehicles are regularly turning into the square. The fact that the platform is of considerable length, amplifies this issue as people may be less willing to wait for others to pass along the length of the platform, than if the platform was short. Similarly, pedestrians heading north might swing out into the road into the line of buses entering the stances. Taken together, I find that these issues would create a safety risk for pedestrians and reduce the ability to move around easily, contrary to one of the six qualities in NPF4 policy 14 on 'connected' places.

16. It is suggested that the relocation of the taxi rank to accommodate the structure has had a consequential effect on the provision of disabled spaces and an overall reduction in parking of up to six spaces. On my site inspection, I observed a range of spaces for different needs around the perimeter of the square including taxi spaces, disabled spaces, police spaces and motorcycle spaces. Public parking is available in the centre of the square itself.

17. The disabled parking is currently located to the north west corner of the square. Two of the three disabled parking spaces there are located immediately adjacent to pavement railings. I consider that this would likely make it more difficult for people to enter and exit their vehicles. There are no railings next to the neighbouring taxi spaces. Additional parking,

including disabled spaces, is available on Wentworth Street on approach to the square from the east. However, for those parking there and visiting the square, this would direct pedestrians or wheelchair users to the same wide spot on the road, mentioned above, where there would be a safety risk from buses turning in to the stances.

18. I agree with the council that the loss of parking to accommodate the platform was perhaps justified during COVID lockdown when traffic levels were lower than they are likely to be now. Nevertheless, there is currently a range of parking available in the square, and near the square, for example in the long-term parking area off Bridge Road to the west. I do not therefore find the loss of parking on its own to be significant, but the way that the disabled parking has been rearranged as a consequence of the platform, has resulted in an adverse effect on disabled people. In addition, the loss of the parking spaces under the platform, preventing tour buses from using them when vacant, is likely to cause some parking and congestion issues at peak times.

19. In light of the above, I consider that there would be an adverse effect on pedestrians and disabled people, and to a limited extent on parking and congestion, contrary to the relevant parts of NPF4 policies 14 and 30, and the relevant parts of LDP policies 28 and 29. Linked to that, I find a conflict with WestPlan's placemaking priorities for Portree, which point towards the possibility of a coordinated plan being progressed in future which effectively accommodates all needs within the square.

Compliance with the development plan

20. Taking all of the above into account, and subject to conditions, I find that the visual effects of the structure are generally in line with NPF4 policy 7 and HwLDP policy 57, and with parts of NPF4 policy 14 and LDP policies 28 and 43. However, the effects on pedestrians and disabled people introduce an element of risk to road safety, contrary to the relevant parts of NPF4 policies 14 and 30, and LDP policies 28 and 29. I consider that the effects on pedestrians and disabled people are key to the acceptability of the structure in its current form and location, and I therefore find that it would be contrary to the development plan as a whole.

Other material considerations

21. As the structure is already in place, I have had regard to the financial implications of its removal or amendment. However, the appellant would have been aware from around 2020 that the consent was temporary and might result in the structure having to be removed or altered in a post-COVID context. In addition, the council raises concerns over the setting of a precedent for permanent occupation of parts of a public road for commercial activities. However, I consider that the council would have statutory powers to prevent further such proposals if it wished. As a result, I do not find that either of these matters are key to my assessment.

Overall conclusion

22. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Rosie Leven
Reporter