

APPEAL DECISION
DPEA
Appeal Reference
PPA 110 2363
Planning Reference
APP/2017/3250
Planning Proposal
Erection of dwellinghouse (amended design) and erection of boundary walls and gates.
Summary of Decision
<p>The Scottish Government Planning and Environmental Appeals Division upheld the appeal by the applicant against the refusal of planning permission by the Council, and granted the application, subject to conditions.</p> <p>The appeal was considered against the Local Development Plan 2017 which was adopted on 17 April 2017.</p> <p>The determining issues in the case are whether the proposal is in accordance with Policies HE2 and RD1 of the ALDP 2017 and other material considerations.</p> <p>In the first instance it is noted that the amendments to the house design are on the facades of an 'uncompromisingly modern' house and as such are not significantly more incongruous or detrimental to the character or appearance of the conservation area than the originally approved development. Furthermore, it is not considered that the design of the boundary walls fails to preserve the character and appearance of the conservation area, and other examples are noted in the immediate area. The inclusion of gates to the Shore Street frontage is considered to be more in keeping with the character of the conservation area, implying continued usage of the lane. It is thus concluded that the development complies with Local Development Plan Policy HE2.</p> <p>In terms of road safety it is noted that Shore Street is a lightly trafficked access road with no protected footways and slow moving vehicles. The fact that the Council's traffic engineers have not expressed a concern with regard to road safety is noted, and it is therefore concluded that there is no significant adverse impact on road safety arising from the development. It is therefore considered to be in compliance with Policy RD1 of the Local Development Plan.</p> <p>It is concluded that the proposed development accords with the relevant provisions of the development plan and there are no other material considerations which would still justify a refusal to grant planning permission.</p>

Policy Issues
None.
Additional Points
None.
Actions None.
Note Decision Appeal upheld and planning permission granted.
Other None.

Planning and Environmental Appeals Division

Appeal Decision Notice

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Decision by Don Rankin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2363
- Site address: 3A Mid Street, Cairnbulg, Fraserburgh, AB43 8WJ
- Appeal by Mr James Sutherland against the decision by Aberdeenshire Council
- Application for planning permission APP/2017/3250 dated 21 December 2017 refused by notice dated 1 June 2018.
- The development proposed: erection of dwelling house (amended design) and erection of boundary walls and gates.
- Application drawings: Site Plan, PL2183-11 – Floor Plans, Elevations and Site Plan
- Date of site visit by Reporter: 30 October 2018

Date of appeal decision: 22 November 2018

Decision

I allow the appeal and grant planning permission subject to the 2 conditions listed at the end of the decision notice.

Background

The planning application, the subject of this appeal, is for full planning permission submitted retrospectively to regularise unauthorised amendments to a previous planning consent of 2008 (APP/2007/4274). A further planning consent (APP/2009/0147) was obtained in 2010 in respect of boundary walls surrounding open ground between the adjacent house No.7 Mid Street and Shore Street. Investigation in 2016 of issues regarding the implementation of this latter permission revealed significant variations between the approved design of the house and that constructed as well as concerns regarding the height of the walls surrounding the garden ground in front of No.7 Mid Street, seaward side, Shore Street entrance.

It was considered by all parties that the most appropriate course of action was for submission of a revised retrospective planning application to secure consent for the discrepancies of design and layout. This revised application for planning permission was however not approved by the council and a refusal notice issued on 1 June 2018. To the best of my knowledge no enforcement action has been taken by the council in respect of the unauthorised works. There is ongoing litigation with regard to whether a right of way exists across the site affording access to Shore Street.

Reasoning

Planning and Environmental Appeals Division

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1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are: (1) whether the proposed development would be detrimental to the character or appearance of the Cairnbulg-Inverallochy Conservation Area; (2) whether it would be detrimental to road safety; and (3) whether other material planning considerations warrant the grant or refusal of planning permission.
2. The matters before me in this appeal arise from inaccuracies in the drawings originally submitted with the planning applications in 2008 (development of dwelling house) and in 2010 (garden walls around open ground on Shore Street). The principle of a new build construction on the site and the enclosure of the site with walls has already been established. The issues therefore centre on whether these inaccuracies have resulted in an adverse and unacceptable impact either on the conservation area or on road safety, these being the council's grounds of refusal.
3. Turning to the first of these issues, the impact on the conservation area, the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 imposes a duty to have regard to the desirability of preserving or enhancing the character or appearance of the conservation area. This duty is carried forward with Policy HE2 of the Aberdeenshire Local Development Plan 2017. I note from the council officer's Report of Handling that the submitted drawing inaccuracies do not significantly affect the footprint of the house on the site and I see no reason to disagree. There are however considerable differences in design both on the seaward side of the house and the south facing Mid Street frontage which result in an increased area of glazing and an enlarged balcony. These alterations however are on the façades of an uncompromisingly modern house and in the context of maximising the views to the sea from such a house do not result in a design which is significantly more incongruous or detrimental to the character or appearance of the conservation area than the original approved development.
4. Concern has also been expressed about the design and siting of the walls enclosing the garden ground between No. 7 Mid Street and Shore Street. The design of these walls has however been already agreed by the planning permission in 2010. There is an implicit assumption that the style and permitted height of 1 metre are appropriate to the conservation area. I note that subsequent irregularities in the height have now been corrected by the appellant. In any case there are several very similar styled walls nearby onto the Shore Street frontage. I find therefore that the design of the walls does not fail to preserve the character and appearance of the conservation area.
5. The outstanding issues about the character and appearance of the conservation area are therefore whether the provision of gates to permit access to the lane running along between Nos. 3A and 7 Mid Street is inappropriate and whether the reduction of the access lane to the Shore Street entrance of No.7 from an estimated 3 metres to about 2 metres has an adverse impact. Whilst I appreciate that both of these matters are the subject of litigation between the appellant and the owners of No.7 this has no direct bearing on my interpretation of planning policy. I consider the inclusion of access gates to be if anything more in keeping with the character of the conservation area, implying as it does continued usage of the lane between the buildings to gain access to the foreshore. Many parts of the

former fishing village are characterised by narrow lanes and entrances and access to the foreshore through these lanes is an integral part of the character of the conservation area. I therefore consider the narrowing of the seaward access to No.7 is not especially incongruous and is therefore compatible with the character and appearance of the conservation area.

6. Having regard to all of the above with respect to the design alterations to the dwellinghouse and the changes to the approved garden boundary walls I conclude that the development does not adversely impact on the character and appearance of the conservation area and in consequence complies in this respect with the statutory duty and local development plan policy noted above.

7. Turning to road safety there appears to be concern that Shore Street does not have protected footways, pedestrians including local school children must walk in the roadway. There is a fear that any reduction in the road width or loss of open land adjoining the roadway could be detrimental to road safety making it difficult for cars to pass each other at this point.

8. The principle of the wall is already established by the extant permission of 2010. Although there are recognised to be inaccuracies in the original site plans this does not appear to have any significant impact on the siting of the wall on the Shore Street frontage. There is therefore no unforeseen narrowing of the road which would be detrimental to road safety. Shore Street is a very lightly trafficked access road with slow moving vehicles. The absence of footways will be well appreciated by drivers who may be expected to exercise special care while driving along the road. I note that the councils traffic engineers have not expressed any concerns over road safety. I conclude therefore that there is no significant adverse impact on road safety arising from the development which in consequence complies in this respect with Policy RD1 of the local development plan.

9. For the reasons set out above I conclude that the proposed development accords overall with the relevant provisions of the development plan and there are other no material considerations which would still justify refusing to grant planning permission.

Don Rankin
Reporter

Conditions

1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 or any order amending, revoking or re-enacting that Order no means of enclosure, other than that shown on the approved plans shall be erected on the site under the terms of Class 3E of Schedule 1 to that Order without an express grant of planning permission from the Planning Authority. (Reason: In the interests of the character and appearance of the development.)
2. The access and parking arrangements for the site shall be in accordance with the following criteria;
 - a) The maximum gradient of the first 5m of the access must not exceed 1 in 20;
 - b) The first 5m of driveway (measure from the edge of the road or the back of the footway) is to be fully paved;
 - c) Off-street parking for 3 cars, surfaced in hard standing materials must be provided within the site;
 - d) Visibility splays measuring 2.0m x 25m are to be formed on either side of the junction of the vehicular access with the public road. The visibility splays so formed shall thereafter be kept free of all permanent obstructions above adjacent carriageway level;
 - e) A refuse bin uplift/store area shall be constructed (behind any visibility splay) so as to be accessible for bin uplift & shall be secure enough to prevent empty bins from being windblown. Details must be submitted to Roads Development for approval;
 - f) A suitable vehicle turning area, measuring not less than 7.6m x 7.6m must be formed within the site to enable all vehicle movements onto or from the public road to be carried out in a forward gear; and
 - g) The height of the boundary wall to the south where vehicles access to and from must not exceed 0.9m. (Reason: To enable drivers of vehicles using the access to have a clear view of other road users and pedestrians, and in the interests of road safety)