

**Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle**

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**Reference No:** 16/00662/PP

**Planning Hierarchy:** Local Application

**Applicant:** Mr John Morrison

**Proposal:** Installation of replacement windows (retrospective)

**Site Address:** Flat 1 and 2, 19 Battery Place, Rothesay

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**DECISION ROUTE**

Local Government Scotland Act 1973

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**(A) THE APPLICATION**

**(i) Development Requiring Express Planning Permission**

Installation of white uPVC double glazed windows (retrospective)

**(ii) Other specified operations**

None

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**(B) RECOMMENDATION:**

Having due regard to Development Plan policy and other material considerations, it is recommended that planning permission **be refused** for the reason set out overleaf.

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**(C) HISTORY:**

Planning Permission (ref: 11/02351/PP) granted on 8<sup>th</sup> February 2012 for the demolition of rear outbuilding, sub-division of dwellinghouse into 2 flats and formation of new vehicular access and off-street parking area at the subject property.

Conservation Area Consent (ref: 11/02484/CONAC) was granted on 6<sup>th</sup> February 2012 for the demolition of the rear outbuilding.

Application (ref: 12/02218/PP) for the demolition of rear outbuilding, sub-division of dwellinghouse into 2 flats and formation of new vehicular access and off-street parking area (amendment to permission 11/02351/PP incorporating change from timber windows to uPVC windows) was refused on 11<sup>th</sup> December 2012.

The refusal of application 12/02218/PP was appealed to the Local Review Body (LRB) in March 2013. During the processing of the appeal, the upvc windows were installed without the benefit of the requisite permission. The appeal was dismissed by the LRB on 3<sup>rd</sup> July 2013.

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**(D) CONSULTATIONS:** None applicable.

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**(E) PUBLICITY:**

Neighbour Notification (expiry date: 7<sup>th</sup> April 2016) and Conservation Advert (expiry date: 22<sup>nd</sup> April 2016)

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**(F) REPRESENTATIONS:**

Councillor Robert MacIntyre (e-mail dated 28<sup>th</sup> April 2016) and Councillor Isobel Strong (e-mail dated 4<sup>th</sup> May 2016) have expressed support for the application. They have asked that a site inspection and a local hearing be held before a decision is reached in the matter. They point out that Mr Morrison has rescued this building from an eyesore and has turned it into two highly desirable flats. The uPVC windows are barely noticeable and all along Battery Place there is a preponderance of uPVC windows. They strongly feel that only by viewing what Mr Morrison has done will it be possible to form a proper appreciation of the matter and that a site visit is essential. They understand that photographs will be issued of what the building looked like prior to Mr Morrison purchasing what was almost a ruin.

Councillor Len Scoullar (e-mail dated 9<sup>th</sup> May 2016) has also expressed support and feels that a visit by Members to acquaint themselves with the amount of uPVC and double glazed windows in the area would be helpful. He notes that the applicant has rescued the building from dereliction at expense and feels that he should be allowed to retain the windows in this case. He notes that if this is not possible he will understand that this will be due to the influence of the Rothesay Windows Policy and Historic Environment Scotland.

Michael Russell MSP has also expressed support for the application (13.04.16) on the grounds that it does seem as if a great deal of effort is being expended in trying to enforce a policy which will result in no visual enhancement of any description to Battery Place. Indeed for the cost of over £12,000 which the Council is attempting to impose on Mr Morrison - who has undertaken highly successful building projects on the island over many years - there will be no visual or other benefit at all.

I do hope the Council will, when this matter comes for final determination, take a reasonable and pragmatic attitude and abandon any attempt to force Mr Morrison to replace the windows he has fitted which comply in all requirements except one, and that one will make no difference to the appearance of the block and might indeed diminish the utility of the flats when they are finally sold.

Two expressions of support have been received from local residents:

Mr Michael Spear, Ground Flat, 27 Battery Place, Rothesay, Isle of Bute (e-mail dated 27<sup>th</sup> March 2016)

Mr Thomas Shaw, 21 Battery Place, Rothesay, Isle of Bute (e-mail dated 27<sup>th</sup> March 2016).

**(i) Summary of issues raised**

Mr Morrison's renovation of the property has added greatly to the visual impact of Battery Place. Given the derelict nature of the building before renovations began, it could be said that Mr Morrison effectively saved the building from deterioration and possible ruin. The replacement windows are unobtrusive and of good quality, and are no more out of keeping than those in ten or twenty properties in the vicinity.

*Comment: It is agreed that the overall renovation works are of good quality. The assessment of the windows is covered in depth below.*

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**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- (i) Environmental Statement: No**
- (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: No**
- (iii) A design or design/access statement: No**
- (iv) A report on the impact of the proposed development e.g.**

Yes – A Supporting Statement from Shepherd & Wedderburn has been submitted with the application. This can be summarised as follows:

- Mr Morrison acquired the property in 2010. At that stage, the property was effectively derelict and incapable of human habitation. Since permission for its redevelopment into two flats, the applicant has invested approximately £250,000 in upgrading the property to its present state.
- The Council's efforts to produce the Rothesay Windows Technical Note 2015 have been well-publicised. There appear to be three broad drivers for the preparation of this new Technical Note. The first is the age of its predecessor, which was prepared in the mid-1990s. The second is the THI funding which the Council secured in relation to Rothesay Conservation Area, and the legacy which the Council hopes to create as a result of benefitting from this funding. The third is the practical reality that there are relatively few timber sash and case windows remaining within the Conservation Area and, against that background, the desire to have a more flexible approach to replacing windows.
- The proliferation of uPVC and aluminium windows throughout the Rothesay Conservation Area is a significant issue. Mr Morrison submits that in the region of 95% of the windows on Battery Place are uPVC. There are a variety of designs of windows including fixed frame, tilt and turn, traditional sash and case openings, and sash and case effect windows where the bottom pane is fixed and the top pane opens. The reason that this proliferation of non-traditional windows is important is that it sets the context for assessing the acceptability of replacement windows in planning terms.
- Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 focusses on preserving or enhancing the character or

appearance of Conservation Areas. It is, therefore, necessary to consider the existing real world character or appearance of the Rothesay Conservation Area and not a hypothetical character or appearance.

- The tenement blocks to the north of Mr Morrison's property contain a variety of window types and this is broadly reflective of the street as a whole. It should also be noted that 19 Battery Place is not listed. 15 Battery Place, which is located towards Rothesay town centre on the other side of the adjacent tenement blocks, is listed. In 2008, it was granted retrospective planning permission and Listed Building Consent for the installation of uPVC windows. The windows that have been installed are not sash and case and do not have an opening mechanism that is comparable to sash and case. Although planning decisions cannot set precedents, Scottish Government guidance stresses the desirability for Planning Authorities to take a consistent approach to decisions.
- It is contended that the replacement uPVC windows do, at the very least, preserve the character and appearance of the Rothesay Conservation Area. They are in keeping with the wider street frontage. When considered in the context of the overall restoration of the property, the replacement windows enhance the character and appearance of the Conservation Area.
- The Rothesay Windows Technical Note 2015 does not form part of the Local Development Plan but it is a material consideration to which the Council should have regard when taking any relevant planning decisions. Mr Morrison's property is not a Listed Building nor is it within a Prime Townscape Block. Statement 3 is, therefore, applicable and this uses permissive rather than restrictive language when describing which types of windows will be permitted. The list is not exhaustive and it does not expressly exclude non-sash and case uPVC windows.
- In the penultimate paragraph of Statement 3, the Technical Working Note provides that:

*"In all instances, the general glazing pattern should mirror the existing traditional window unless there are strong reasons for permitting change e.g. to reinstate some consistency or unity to a building or street frontage where different glazing pattern predominates and where there is no sound reason for maintaining a different pattern. Where glazing bars or astragals are required, these must be carefully designed and detailed to match the original or, where appropriate, the predominant window style".*

Given the appearance of the one-third/two-third split in the windows that Mr Morrison has installed, the glazing pattern has been retained. Although there is no 'stepped effect' on these windows, the appearance is still in keeping with the surrounding windows in Battery Place. The predominant window style is non-sash and case uPVC units.

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**(H) PLANNING OBLIGATIONS**

**Is a Section 75 agreement required: No**

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**(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No**

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**(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

**(i) List of all Development Plan Policy considerations taken into account in assessment of the application.**

Argyll and Bute Local Development Plan 2015

LDP STRAT 1 – Sustainable Development

LDP 3 – Supporting the Protection, Conservation and Enhancement of our Environment

LDP 9 – Development Setting, Layout and Design

Supplementary Guidance

SG LDP ENV 17 –Development in Conservation Areas and Special Built Environment Areas

**(ii) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.**

Scottish Planning Policy 2014

Scottish Historic Environment Policy, Historic Environment Scotland, 2011

Managing Change: Windows, Historic Environment Scotland, 2010

The Rothesay Conservation Area Appraisal and Management Plan

Argyll and Bute Historic Environment Strategy 2015

Rothesay Windows Technical Note 2015

Third Party Representations

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**(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No**

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**(L) Has the application been the subject of statutory pre-application consultation (PAC): No**

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**(M) Has a sustainability check list been submitted: No**

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**(N) Does the Council have an interest in the site: No**

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**(O) Requirement for a hearing:** Councillors MacIntyre and Strong have asked that the application be the subject of a discretionary hearing. It is not considered that this is warranted in view of the limited public involvement in the application. He has also asked that the completed development should be the subject of a site inspection, which could be

of value in appreciating the completed development. Photographs of the building and its surroundings will be available at the meeting which should be sufficient in order for Members to appreciate the design and appearance of the windows and the context within which this building is situated. Only in circumstances where Members feel that the information before them is insufficient for a decision to be made should the matter then be the subject of a Members' site visit.

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**(P) Assessment and summary of determining issues and material considerations**

Retrospective planning permission is sought for the installation of 17 windows on the front elevation of Flats 1 and 2, 19 Battery Place, Rothesay, Isle of Bute. The building is not listed but occupies a prominent waterfront position in the Rothesay Conservation Area. The original permission for the alteration of the building specified the installation of white-painted timber sash and case units but this was challenged by the applicant in a subsequent application for uPVC units. After refusal, the applicant appealed the decision to the Local Review Body but, prior to a decision being made, the uPVC windows were installed without the benefit of Planning Permission. The Local Review Body ultimately dismissed the appeal and the applicant has now elected to apply retrospectively for the replacement windows.

The determining factors are whether the development preserves or enhances the character and appearance Conservation Area and whether it underpins aspects of heritage-led regeneration that the Council values through the Townscape Heritage Initiative (THI) and Conservation Area Regeneration Scheme (CARS). As well as the general heritage policies contained within the Development Plan and National Policy (such as SHEP and Managing Change - Windows 2010), the Council has recently approved detailed guidance for replacement windows in Rothesay contained within the Rothesay Windows Technical Note 2015 and Town Centre Character Area Management Plan. The emphasis of this guidance for buildings within what are termed 'non-prime' townscape blocks is that uPVC windows with good proportions will normally be acceptable providing that they mimic the stepped effect of sash and case windows. The windows that have been installed do not conform to this guidance.

Furthermore, it is noted that significant investment has been made towards heritage projects in recent years and the Town Centre Character Area Management Plan specifically seeks to boost confidence, reverse the decline and mend damage previously caused in the Conservation Area. Significant funding and environmental improvements have been achieved using these heritage sensitive principles and it would be counter-productive to disregard them for such a prominent building.

The introduction of uPVC windows which do not have a distinctive stepped effect of traditional fenestration does not accord with the provisions of the Development Plan, National Guidance or the detailed technical working notes for Rothesay. Allowing such degradation in a prominent waterfront location would also undermine and potentially jeopardise the commitment already made by the Council towards heritage led regeneration. With that context in mind the application is recommended for refusal.

Expressions of support have been received from an MSP, three local Members and two local residents.

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**(Q) Is the proposal consistent with the Development Plan: No**

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**(R) Reasons why planning permission or a Planning Permission in Principle should be granted: Not applicable**

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**(S) Reasoned justification for a departure to the provisions of the Development Plan:**

Not applicable

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**(T) Need for notification to Scottish Ministers:** Not required.

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**Author of Report:** Steven Gove

**Date:** 21<sup>st</sup> April 2016

**Reviewing Officer:** David Love

**Date:** 26<sup>th</sup> April 2016

**Angus Gilmour**  
**Head of Planning and Regulatory Services**

## **GROUNDINGS OF REFUSAL RELATIVE TO APPLICATION REF. NO.16/00662/PP**

1. The replacement windows on the subject property, by virtue of their inappropriate design which neither incorporates nor mimics the distinctive stepped effect inherent within sash and case units, would have an unacceptable impact upon the architectural and historic interest of this attractive

building which is located in a visually prominent position within the Rothesay Conservation Area. As a consequence, the development is contrary to STRAT 1, LDP 3 and LDP 9 of the Argyll and Bute Local Development Plan adopted 2015; Policies SG LDP ENV 16(a) and SG LDP ENV 17 of the Argyll and Bute Local Development Plan Supplementary Guidance 2016; the Council's Rothesay Windows Technical Note 2015; and the advice contained within the following documents from Historic Scotland – Scottish Historic Environment Policy 2011 and Managing Change in the Historic Environment - '*Windows*' which state, *inter alia*, that buildings within non-prime townscape blocks should have, at the very least, windows with good proportions that mimic the stepped effect of sash and case windows.

## **NOTE TO APPLICANT**

For the purpose of clarity, it is advised that this decision notice relates to the details specified on the application form dated 24<sup>th</sup> February 2016 and the following refused drawings:

**Drawing 1 of 7 (Location Plan)**

**Drawing 2 of 7 (Photograph of Front Elevation)**

**Drawing 3 of 7 (Specification of Windows 1 and 2)**

**Drawing 4 of 7 (Specification of Windows 3-5)**

**Drawing 5 of 7 (Specification of Windows 6-8)**

**Drawing 6 of 7 (Specification of Windows 9 and 11)**

**Drawing 7 of 7 (Specification of Windows 12, 14 and 20)**

## **APPENDIX A – RELATIVE TO APPLICATION NUMBER: 16/00662/PP**

### **PLANNING LAND USE AND POLICY ASSESSMENT**

#### **A. Built Environment**

This is a retrospective planning application for the replacement of two-paned, blue-painted, timber vertically sliding sash and case windows in 19 Battery Place by white uPVC casement and tilt and turn windows.

The subject property has been sub-divided into two flats and is located in a prominent waterfront location within the Rothesay Conservation Area. For a significant number of years, the building had been in a dilapidated state until the applicant, Mr John Morrison, purchased it in 2010. Refurbishment works commenced in late 2012 and are largely complete, although the two flats are not occupied. In terms of rescuing a building that was deteriorating into something of an eyesore, the applicant is to be commended. However, the windows that have been installed do not have the benefit of Planning Permission.

Planning authorities are under a general duty with respect to any building or land within a conservation area when exercising powers under the Planning Acts to pay special attention to the 'desirability of preserving or enhancing the character or appearance of the area' (Section 64(1) Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997). This has been held in case law to be something which could be advanced not only by means of a development which makes a positive contribution to preservation, but also by development which would leave the character and appearance of the area unharmed. In other words, the consequence of the duty is that developments with positive or neutral effects may be considered favourably, whereas proposals with harmful consequences for the character or appearance of the designated area are unlikely to be acceptable. However, the duty to have regard to these circumstances is not an imperative to refuse all applications which fail to preserve or enhance character or appearance, as the planning authority retains a discretion and is not relieved by the duty of having regard to all other material considerations.

Policy LDP STRAT 1 of the Argyll and Bute Local Development Plan requires developers to demonstrate, *inter alia*, that the development would "*conserve and enhance the natural and built environment and avoid significant adverse impacts on biodiversity, natural and built heritage resources.*" Policy LDP 3 notes that development will not be supported where it does not protect, conserve or where possible enhance the established character of the built environment in terms of its location, scale, form and design, and where it would have significant adverse effects, including cumulative effects on the special qualities or integrity of built environment sites. Policy LDP 9 requires that the design of development be compatible with their surroundings and that particular attention be paid to sensitive locations, such as listed buildings and conservation areas.

This site is located within the Rothesay Conservation Area and Supplementary Guidance policy SG LDP ENV 17 notes that there is a presumption against development that does not preserve or enhance the character or appearance of a conservation area. The guidance requires that "*new development within these areas and on sites forming part of their settings must be of the highest quality, respect and enhance the architectural and other special qualities that give rise to their actual ..... designation and conform to Scottish Historic Environment Policy 2011 and accompanying Managing Change Guidance Notes.*"

The loss of traditional timber sash and case windows and the introduction of windows constructed of uPVC which neither incorporate nor mimic the distinctive stepped effect inherent within sash and case units therefore render **the application contrary to Development Plan policies.**

## **B. Other Key Policy Matters**

In the case of 19 Battery Place, the original windows that were in the building prior to refurbishment works occurring were timber, vertically sliding sash and case. Whilst a detailed analysis of the windows did not take place in 2012 when the applicant was seeking to refurbish the property, a visual inspection would have confirmed that there were relatively serious defects associated with

the fenestration and that replacement would be justifiable. This was the basis of the decision to approve application 11/02351/PP where replacement timber windows proposed, and then to refuse application 12/02218/PP when uPVC units were proposed. Such an approach was endorsed by the decision of the Members of the Local Review Body to dismiss the subsequent appeal.

The Rothesay Windows Technical Note 2015 (approved by the Members of the Planning, Protective Services and Licensing Committee in December 2015) is a material planning consideration in the determination of the current application. This Technical Note seeks to provide a more flexible approach to window replacement across the whole Conservation Area by seeking to preserve the most valued heritage assets (listed buildings and prime townscape blocks). It also seeks to uplift the quality of window replacements and improve the incremental damage and loss of window fenestrations over the years.

In all circumstances, the Technical Note retains a preference for retention, repair and refurbishment (statement 1). As mentioned in the paragraph above, there was justification for replacement of the original windows at 19 Battery Place given their poor condition. However, in a revision to previous guidance, the Technical Note introduces the concept of areas where the majority of buildings have already lost some or all of their original windows or historical fenestration value through inappropriate replacements over the years. 19 Battery Place is included in one of these 'non-prime' townscape blocks and, within such blocks, a number of different units will be permitted including:-

1. Good quality, well-proportioned white uPVC sliding sash and case;
2. White painted timber double swing / tilt & turn with a stepped effect which give the appearance of a sash and case windows in all respects except when open; and
3. uPVC fixed pane units (no opening mechanism in accordance with Building Standards) with good proportions and that mimic the stepped effect of sash and case window will also normally be acceptable

The windows that have been installed in 19 Battery Place are reasonably well-proportioned (although they do not strictly replicate the 50/50 split of the originals); however, crucially they do not incorporate the stepped effect that would mimic the effect of a sash and case window. The lack of a stepped effect gives the windows a more modern flat appearance with a thicker transom bar on the majority of the windows and the failure to replicate the distinctive feature of a sash and case unit.

### **C. Other Scottish Government Advice**

Historic Environment Scotland's Scottish Historic Environmental Policy 2011 states, in Section 2.44, that "*once (a Conservation) area has been designated, it becomes the duty of the planning authority and any other authority concerned, including Scottish Ministers, to pay special attention to the desirability of preserving or enhancing the character and appearance of the area when exercising their powers under the planning legislation*".

One of Historic Scotland's documents on managing change within the historic environment relates specifically to windows. This document contains the following quotes relevant to this case:

*"In almost all cases, repair of components on a like-for-like basis is preferable to replacement of a whole unit, as this will best maintain the character and historic fabric of the window."* (Paragraph 4.3)

*"Where there is no alternative to the replacement of historic windows or elements of their joinery or glazing, the new elements should match the original. This should include replication of the proportion, opening method, astragal dimensions and profiles, and fixing*

*of the glass (e.g. putty). Historic glass should be reused where this contributes to a building's character.” (Paragraph 4.4)*

*“The use of double-glazing in historic buildings will either involve replacing the glazing within existing frames or replacing the entire unit. Either solution can be acceptable in certain circumstances.*

*Recent research has demonstrated that slim profile double glazing can be accommodated successfully in historic window frames. This solution will not be appropriate where there is the loss of historic glass.*

*Double-glazing that involves replacement of the entire window unit may be used where it can be demonstrated that the existing windows are beyond repair, and that the new windows will match the originals as closely as possible.” (Paragraphs 4.09 to 4.11)*

In this particular case, given the poor condition of the original windows, there was justification for replacement windows to be installed. However, and as mentioned elsewhere in this report, the replacement windows crucially do not incorporate the stepped effect that would mimic the effect of a sash and case window. The lack of a stepped effect gives the windows a more modern appearance with a thicker transom bar on the majority of the windows and the failure to replicate the distinctive feature of a sash and case unit. On this basis, the development is considered contrary to Government guidance.

**D.     **Rothesay Conservation Area: Townscape Heritage Initiative (THI), Conservation Area Regeneration Scheme (CARS) & Town Centre Character Area Management Plan****

The Rothesay Townscape Heritage Initiative (THI) and Conservation Area Regeneration Scheme (CARS) projects have sought to revitalise the defined core area within Rothesay's historic town centre, by offering grants to property owners, and focusing on structural and external repairs to priority buildings. The core area includes Guildford Square and surrounding streets. The projects, along with additional private sector investment, have leveraged around £4m funding towards heritage led projects into Rothesay. Whilst there is currently no additional grant funding available at this time, the Council has applied to the Heritage Lottery Fund for another round of THI funding which, if successful, is likely to be progressed towards business case in 2016/17.

Officers are very supportive of investment made to buildings in Rothesay and, indeed, are hugely encouraged by the marked uplift in quality of the built environment that has stemmed from heritage led regeneration projects over recent years. It is accepted in the Management Plan and the new Technical Working Note that there have been a number of unsympathetic window replacements over the years, but an underlying principle of both documents is to ‘reverse the decline’ and ‘mend the damage’ – particularly in the most important historic buildings.

The Council and other funders have invested significantly in heritage led projects in Rothesay in recent years and secured sympathetic alterations to a number of buildings in the town, uplifting the quality of the environment as a whole. Approving this application would not only undermine the underlying principles of the THI and CARS but would also be contradictory and potentially jeopardise future funding opportunities.

**E.     **Conclusion****

There is recognition that the applicant has rescued a building within the Rothesay Conservation Area that was something of an eyesore in terms of its condition and appearance. However, the introduction of uPVC windows that do not have a distinctive stepped effect does not accord with the Development Plan, National Guidance or detailed technical working notes for Rothesay. Allowing such degradation in a prominent waterfront location would also undermine and potentially jeopardise the commitment already made

by the Council and others towards heritage led regeneration. With that in mind the application is recommended for refusal.