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Hamish Hoey & Son,
c/o Bruce & Neil Chartered Architects
Sent by email

Our ref: NA-130-006
Planning Authority ref:22/0004/LRB - 19/01858/PP

22 November 2023

Dear Mr Neil

NOTIFIED APPLICATION: ALTERATIONS TO EXISTING OFFICES AND FUNERAL FACILITIES AT GROUND FLOOR LEVEL AND ALTERATIONS AND CHANGE OF USE OF FIRST AND SECOND FLOOR WORKSHOPS AND STORES TO CREATE 4 FLATS; 37 - 39 STEVENSON STREET OBAN PA34 5NA

1. This letter contains the Scottish Ministers' decision on the above planning application submitted to Argyll and Bute Council by Hamish Hoey & Son on 4 September 2019 (planning reference: 19/01858/PP).
2. The application was called in for the Scottish Ministers determination on 1 March 2023 by direction under section 46 of the Town and Country Planning (Scotland) Act 1997 "in view of the proposed development's potential conflict with national policy on flood risk".
3. The application was considered by means of written submissions and a site inspection by Sue Bell, a reporter appointed by the Scottish Ministers for that purpose.
4. The final report with the reporters' recommendation was issued to the Scottish Ministers on 29 September 2023. A copy of the reporters' report ('the Report') is enclosed. All references to paragraph and chapter numbers, unless otherwise stated, are to those in the Report.

Proposal

5. Improvements are proposed to the ground floor of the property to complement its existing use as a funeral director, together with the redevelopment of the upper floors from storage into 4 residential flats. The proposed development is a category C listed building.

Reporter's Recommendation and Scottish Ministers' Decision

6. The reporter has recommended that the application be refused. Scottish Ministers have carefully considered all the evidence presented and the reporter's findings and conclusions in the report. The Scottish Ministers agree with the reporter's recommendation and refuse planning permission, for the reasons summarised below and as detailed in the reporter's report.

Legal and Development Plan Context

7. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997 all applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, the Scottish Ministers agree with the reporter at paragraph 4 that the development plan for this case comprises National Planning Framework 4 (NPF4, 2023) and the Argyll and Bute Local Development Plan (LDP, 2015) and its associated supplementary guidance.

8. The Scottish Ministers agree with the reporter's identification of other relevant policy and guidance documents at paragraph 7 including:

- SEPA's Flood Risk and Land Use Vulnerability Guidance
- SEPA's Development Management Guidance: Flood Risk
- Historic Environment Policy for Scotland (HEPS) 2019
- HES Managing Change in the Historic Environment – Setting, 2016
- HES Managing Change in the Historic Environment – Interiors, 2016
- HES Managing Change in the Historic Environment – Windows, 2018

9. The Scottish Ministers also agree with the reporter's findings at paragraph 6 that as the property is a Category C listed building, section 14 (2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (LBCA) requires that special regard must be given to the desirability of preserving the listed building or its setting and any special features of historic or architectural interest that it possesses.

10. Relevant policies include (Paragraph 35, 42): Policy LDP 3 (supporting the protection, conservation and enhancement of our environment) of the Argyll and Bute LDP 2015; SG LDP ENV 16(a) (impact on listed buildings); NPF4 Policy 7(Listed buildings) which seeks to achieve similar outcomes through protecting and enhancing historic environment assets and places and to enable positive change as a catalyst for the regeneration of places; Historic Environment Policy for Scotland (HEPS) 2019; and the Managing Change series of documents, which provide advice on how to ensure that developments to listed buildings are of the highest quality, design and finish.

Main Issues

11. The Scottish Ministers agree with the reporter at paragraph 9, that the main considerations in deciding this application are:

- Flood risk
- Effects of the proposal on the listed building

Flood risk

12. The Scottish Ministers have taken into account the reporter's findings in paragraph 21 that there is no dispute between parties that the application site lies within the medium likelihood (0.5% annual probability or 1 in 200 year return period) fluvial and coastal flood extents of the SEPA Flood Map. It is therefore considered to be at medium to high risk of flooding.

13. The Scottish Ministers agree with the reporter that there is a clear conflict between the proposed development and Policy LDP 10 (maximising our resources and reducing our consumption) of the Argyll and Bute LDP 2015 and supplementary guidance (SG) SG LDP SERV 7 (flooding and land erosion – risk framework). This is in terms of avoiding areas subject to flood risk or erosion, applying the ‘precautionary principle’ and refusing proposals that do not meet the criteria for exemption and/ or on the advice of SEPA.

14. The Scottish Ministers agree with the reporter in paragraph 19 that the proposed development does not meet the exceptions in NPF4 Policy 22 (flood risk and water management) where development proposals are at risk of flooding.

15. The Scottish Ministers also agree with the reporter in paragraph 22 that there do not appear to be any specific flood prevention measures in place or planned to meet the standards set out in policy LDP 10 and SG LDP ENV7. In addition, the proposals do not appear to accord with flood prevention or management measures as specified in association with a Local Development Plan Allocation or development brief. Thus, the proposals do not fully satisfy any of the exemption criteria set out in Policy LDP 10 or the supporting SG LDP SERV 7.

16. The Scottish Ministers agree with the reporter in paragraph 23 that while the proposed re-development works to the ground floor would not result in any change in the vulnerability use class as set out in SEPA’s ‘Flood Risk and Land Use Vulnerability Guidance’ (2018), the proposed residential use for the upper floors would represent an increase in vulnerability from Least Vulnerable to Highly Vulnerable. This would be contrary to the requirements of criterion (iii) of part a) of NPF4 Policy 22. The proposals would also fail to satisfy criterion (iv) of the same policy as the building is not identified within the local development plan as a site that should be brought into positive use, given the building is already occupied and in active use.

17. The Scottish Ministers agree with the reporter in paragraph 24 that both Policy LDP 10 and NPF4 Policy 22 require proposals to be in accordance with SEPA advice. The applicant has not provided a Flood Risk Assessment specific to the proposal site, contrary to published SEPA guidance (Technical Flood Risk Guidance for Stakeholders - SEPA requirements for undertaking a Flood Risk Assessment -Version 13 June 2022), instead, relying on a Flood Risk Assessment prepared to support proposals for a different development site located upstream of the proposal site (Lochside Street) albeit on the same watercourse, dating from 2009.

18. The Scottish Ministers note the commentary on the Flood Risk Assessment for the Lochside Street, council records of flood incidents, SEPA records of events at / near the site and reports from the owners of the proposal building about localised flooding at the site inspection as set out in paragraphs 25-28. The Scottish Ministers agree with the reporter’s conclusions on this matter in paragraph 29, that in the absence of a detailed site-specific Flood Risk Assessment it is necessary to rely on the indicative SEPA Flood Maps. The Scottish Ministers also agree with the reporter that it is not appropriate to rely on the Flood Risk Assessment prepared for a different site, given that assessment only considers risks from fluvial flooding and makes no provision for tidal flooding. Also climate change allowances for river flow and sea level rise have been updated since the report was produced, and the submitted Flood Risk Assessment is for a retail and office development, as opposed to residential development.

19. The Scottish Ministers acknowledge (paragraph 30) SEPA’s consideration that even if a site specific Flood Risk Assessment were undertaken it is likely that it would only serve to confirm the serious flood risk to the site.

20. The Scottish Ministers accept the reporter's findings in paragraph 31 that there appears no possibility of providing mitigation for risk in the case of emergencies in the form of alternative access routes from the rear of the property, which sits directly adjacent to a near-vertical cliff-face.

21. The Scottish Ministers agree with the reporter's overall findings in paragraph 33 that in summary the proposed development: is in an area identified as at medium – high risk of flooding from fluvial and tidal sources; fails to meet the criteria for developments acceptable in such areas, as set out in Policy 10 LDP and SG LDP SERV 7 of the Argyll and Bute LDP; the change in use of the upper floors of the application building would represent an increase in the land use vulnerability classification from least vulnerable to highly vulnerable, and the proposals fail to meet the criteria for development in flood risk areas set out in Policy 22 of NPF4. In addition, the proposed development has not been accompanied by a site-specific Flood Risk Assessment contrary to published SEPA guidance. No evidence has been provided to support the view of the applicant that local conditions mean that the risk of flooding would be linked to tidal flooding and that an incidence of flooding coinciding with a medical emergency is low. In conclusion, Scottish Ministers agree with the reporter that the proposed development fails to satisfy Policy 10 and its supporting SG LDP SERV 7 of the Argyll and Bute LDP 2015 and Policy 22 of NPF4.

Main issue 2: Effects of the proposal on the listed building

22. The Scottish Ministers have taken into account the reporter's findings in paragraphs 37-41: that the proposals would require both internal and external alterations; the description of the special interest of the building makes no reference to any internal features of importance; there did not appear to be any original features or architectural features of historic importance within the building; and the proposed external alterations would result in some changes in the overall appearance of the building, but the overall visual layout and symmetrical façade of three bays on the western (Stevenson Street) elevation would remain.

23. The Scottish Ministers agree with the reporter's findings in paragraphs 42-43 that: the proposed development would be consistent with Policy 3 of Historic Environment Policy for Scotland (HEPS) 2019; the Managing Change series of documents; SG LDP ENV 16 of the Argyll and Bute LDP 2015; and that the proposals would not have a potentially significant impact on the listed building.

Other material considerations

24. The Scottish Ministers agree with the reporter's findings in paragraph 44, that the proposal gains some support from: Policy LDP DM 1 (development within the Development Management Zones); Policy LDP 5 (supporting the sustainable growth of our economy); and SG LDP BUS 1 (business and industry proposals in existing settlements and identified business and industry areas of the 2015 LDP) of the Argyll and Bute LDP 2015.

25. The Scottish Ministers agree with the reporter in paragraph 45 that the proposals would not have an adverse impact on the setting within the wider North-West Argyll (Coast) Area of Panoramic Quality and is not contrary to Policy LDP 9 (development setting, layout and design) or SG LDP ENV 13 (development impact on Areas of Panoramic Quality (APQs)).

26. The Scottish Ministers agree with the reporter in paragraph 46, in terms of parking and water connection, that the proposals comply with the requirements of policies LDP11 (improving our connectivity and infrastructure); SG LDP TRAN 4 (new & existing, public

roads & private access regimes); and SG LDP TRAN 6 (vehicle parking provision of the LDP).

27. The Scottish Ministers similarly agree with the reporter in paragraph 47, that the proposal is consistent with the other ‘spatial principles’ that the applicant has highlighted in terms of conserving and recycling existing assets; ‘local living’ with the associated benefits to mental and physical wellbeing and ‘compact urban growth’.

Conclusion

28. The Scottish Ministers agree with the reporter’s conclusions in terms of the development plan in paragraphs 52-55, that the proposal would allow for the sympathetic adaption of a listed building, in a central location within Oban, to enable it to better meet the needs of an existing business and as such gains some support from policies LDP DM 1, LDP 3, SG LDP ENV 16, LDP 5 and SG LDP BUS 1 of the Argyll and Bute LDP 2015. It is agreed, however, that these benefits need to be judged against national and development plan policy relating to flooding and the risk of harm to human safety associated with the risk of flooding (including tidal flooding). Policy 22 of NPF4 sets out a clear intention to strengthen resilience to flood risk by promoting avoidance as a first principle and reducing the vulnerability of existing and future development to flooding, the property is located within an area identified as at medium – high risk of flooding from tidal and fluvial sources on the SEPA indicative Flood Maps and the proposals would result in an increase in land use vulnerability classification from least vulnerable to highly vulnerable. The Scottish Ministers agree that proposal fails to satisfy the criteria for development in such areas as set out in Policy 10 and SG LDP SERV 7 of the Argyll and Bute LDP 2015 or Policy 22 of NPF4, and that the benefits of the proposal do not outweigh the risks of harm and would not be in accordance with the development plan.

29. The Scottish Ministers note that a replacement LDP (LDP2) is in preparation. On the 20th October, 2023, Argyll and Bute Council submitted their intention to adopt their LDP and this is currently under consideration by the Scottish Ministers. The Scottish Ministers agree with the reporter on paragraph 56 that the proposed LDP2 and examination report are an important material consideration, but the emerging policies within LDP2 (Policy 55 of proposed LDP2 relates to flooding) would not substantially or materially alter the assessment of the proposed development above.

30. The Scottish Ministers agree with the reporter that for the reasons set out above, the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would justify granting planning permission.

Formal Decision

31. Accordingly, for the reasons detailed in the reporter’s report and as summarised in this letter, the Scottish Ministers hereby refuse planning permission for the proposed development.

Right to Challenge

32. This decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997, of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If such an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the applicant’s interests have been substantially prejudiced by a

failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

33. A copy of this letter and the reporter's report has been sent to Argyll and Bute Council.

Yours sincerely

Allen Hughes

ALLEN HUGHES