

Reporter's Report

Planning and Environmental Appeals Division

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Hadrian House, Callendar Business Park, Falkirk, FK1 1XR

Report to the Scottish Ministers

Town and Country Planning (Scotland) Act 1997

Report by Sue Bell, a reporter appointed by the Scottish Ministers

- Case reference: NA-130-006
- Site Address: 37 – 39 Stevenson Street, Oban, Argyll and Bute, PA34 5NA
- Application by: Hamish Hoey & Son
- Application for planning permission ref. 22/0004/LRB dated 17 June 2022; (planning application ref) 19/01858/PP dated 4 September 2019
- The development proposed: 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
- Date of site visit: 23 May 2023

Date of this report and recommendation: 29 September 2023

Recommendation¹

Refuse planning permission.

Background

1. The proposal seeks permission for redevelopment of a category C listed building. Ground floor alterations would complement the current use as a funeral undertakers. The upper floors, which are currently used for storage, would be redeveloped into four flats.

2. The Scottish Environment Protection Agency (SEPA) has objected to the proposals as the site is at medium likelihood of flooding from fluvial and coastal flood sources and the proposed residential use represents an increase in vulnerability of use class from the current office/commercial use. SEPA would have no objection if the use of the building were to remain in the Least vulnerable use category. SEPA also considers that inadequate site-specific information about flood risk has been provided. Concerns about flood risk were also raised by the council's flood advisers.

3. The proposals were initially refused by the council's planning officers on the grounds of flood risk. The application was subsequently reviewed by the Local Review Body, who considered that the proposal could be approved as a minor departure from policy.

Policy context

4. The development plan comprises National Planning Framework 4 (NPF4) and the Argyll and Bute Local Development Plan 2015 and its associated supplementary guidance.

5. The proposal was assessed by the council prior to implementation of NPF4, but parties have had an opportunity to comment on the implications of this.

6. The property is a listed building. Section 14 (2) of the Listed Building and Conservation Area (LBCA) Act requires me to have special regard to the desirability of preserving the listed building or its setting and any special features of historic or architectural interest that it possesses.

7. Other relevant policy and guidance documents include:

- 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

8. In addition, the council is preparing an updated local development plan (Argyll and Bute proposed Local Development Plan 2, November 2019). This has been subject to examination by Scottish Ministers. At time of writing, the council is considering the modifications proposed by reporters, but has not yet adopted the proposed plan.

The relevant issues for Ministers' consideration

9. Having considered all the evidence before me my advice is that the main considerations for Ministers in deciding this application are:

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| <ul style="list-style-type: none">• Flood risk• Effects of the proposal on the listed building |
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10. Whilst the proposal could be defined as an 'urban development project', the area of development is less than 0.5ha and is not in a sensitive area. Hence it falls below the thresholds set out in Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 and an Environmental Impact Assessment is not required.

The main points for the applicant

11. The main points as set out in the applicant's request for review by the council's Local Review Body and in response to my requests for further information are:

- A Flood Risk Assessment for a site further upstream on the Black Lynn Burn at Lochside Street prepared in 2009 has been submitted in support of the application.

- The applicant's local Environmental consultant has confirmed that a fresh Flood Risk Assessment based on current predictions would be unlikely to demonstrate any lesser risk of 1:200 year event flooding at the application site.
- The applicant recognises that there is a 1:200 year risk of tidal flooding at the application site.
- The proposed alterations to the ground floor of the building would continue an existing and established function with no increase in risk.
- The objections from SEPA and the council's Flood Risk Adviser are based on the serious but unlikely coincidence of tidal (and therefore temporary) flooding at the application site with the need for an emergency evacuation from the proposed flats.
- The topography at the rear of the building has been investigated. It is considered that given the relative heights and levels, a tortuous series of stairs and ramps would be required in order to reach Star Brae from the top floor in a manner that would be acceptable to Building Standards.
- The stairs and ramps that would be required are considered unlikely to be acceptable at the rear of the listed building.
- The potential emergency access/escape route from the rear of the building to Star Brae is considered to be more hazardous and unsuitable than an evacuation through a partially flooded Stevenson Street at the front of the building.
- Refusal of this application on the basis of short term tidal flooding on a 1:200 year event coinciding with an emergency in the building would effectively sterilise this prominent listed building in its town centre location for use in adaptation to much needed town centre housing.
- The flood risk concerns by SEPA have been allowed to override all other positive aspects of the proposals.
- The relevant provisions of NPF4 add emphasis to the applicant's contention that the application should not be refused on the grounds of flood risk alone.

The main points for the planning authority

12. The application was initially refused by the Planning Service under delegated powers. Reasons for this decision were set out in the Report of Handling included at pages 22 – 31 of the 1st Agenda Pack for the Local Review Body. These relate to flood risk, which officers considered contrary to national policy, SEPA guidance and policy related to flooding within the local development plan.

13. The application was subsequently referred to the Local Review Body. It reached the decision that the proposal could be approved as a minor departure to the local development plan, the provisions of Scottish Planning Policy 2014 and the advice of SEPA, based on the following:

- The proposed development complies with the adopted LDP 2015 in all respects except that it is considered contrary to Scottish Planning Policy 2014, SEPA's Flood Guidance and to Policy LDP 10 and Supplementary guidance SG LDP SERV 7 of the Local Development Plan, which require development to be located outwith areas of significant flood risk.
- The determining factor in the assessment of this application rests on a single technical issue and a matter of national and local planning policy with respect to flood risk.

- It is proposed to reuse the upper floors of an existing listed building to form four new flats and there is a recognised shortage of permanent residential accommodation in Oban.
- The council's WDM Asset Management System lists three flooding incidents in Stevenson Street since 2012. Two of these occurred in 2015 outside 11 Stevenson Street, which is approximately 200 yards from the application site. One dates from 2018, which advises of a possible issue due to the demolition of a building but there is no record of flooding occurring.
- There are records of several floods at a location around 500/600 yards from Stevenson Street. However, it is not thought that there was any flooding in Stevenson Street at the same time as these floods occurred.
- The Black Lynn Burn runs approximately 6/8 feet below the road level in Stevenson Street and there is a retaining wall of another 4 feet that the water would have to get over in order for Stevenson Street to flood at the location of the application site.
- It is accepted that there is a 1:200 year risk of flooding in this area and there could be a risk to the ability to evacuate any occupants of the flat should there be an unusually high tide combined with someone being critically ill.
- By mandating the flats to be used for permanent residential accommodation and the use of water resistant materials wherever possible, the proposed development would secure the best viable use of the listed building and offer a wider public benefit in the provision of town centre permanent residential development. This would significantly outweigh any disadvantages of the development.
- The proposals would also retain and enhance the special interest, character and setting of the listed building.

The main points for SEPA

14. SEPA's original objection to the proposals made reference to Scottish Planning Policy 2014. SEPA notes that whilst implementation of NPF4 this has changed its policy position, its objection still stands. Key points raised are:

- The application site (or parts thereof) 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 and may therefore be at medium to high risk of flooding.
- There are a number of records of historical flooding in the surrounding area attributed to both coastal, river and also surface water flooding.
- Flood records state that Stevenson Street flooded in 2005 to a depth of 2 – 3 feet, from tidal/ coastal inundation only.
- For planning purposes, the functional flood plain will generally have a greater than 0.5% (1:200) probability of flooding in any year. Built development should not therefore take place on the functional flood plain.
- The proposal includes a proposed change of use from office/commercial to a flatted development on the second floor which is viewed as an increase in Land Use Vulnerability from Least to Highly Vulnerable.
- The flatted development may be elevated above flood levels, but SEPA has concerns about the viability of access/egress.
- Insufficient information is provided to enable SEPA to assess flood risk.
- SEPA objects to the development until a Flood Risk Assessment or other appropriate information is provided in support of the application.

- SEPA will remove its objection on flood risk grounds if a Flood Risk Assessment (or other information) demonstrates that the proposed development accords with the principles of Scottish Planning Policy.
- Policy 22a) of NPF4 outlines four exceptional development types which may be located in flood risk areas. The proposed development does not meet any of these exceptional criteria.

Other parties' cases

15. In addition to comments from SEPA, consultation responses were received from three parties. The council's Roads Authority did not object to the proposals. Scottish Water also did not object, but noted that they were unable to confirm capacity for provision of water.

16. JBA Consulting Ltd (JBA) provide advice on flood risk issues to Argyll and Bute Council. Its initial response (21 October 2019) deferred a decision pending receipt of details to demonstrate that emergency pedestrian access/egress is achievable within a 1 in 200 year flood event. Its later response (24/12/2019) following submission of additional information by the applicant, raised similar points to made by SEPA: the additional information was qualitative in nature; the submitted Flood Risk Assessment for a different site would need to be updated; and the proposals appear to be within or close to the SEPA coastal flood warning scheme for Oban. The response suggested that the applicants confirm that SEPA that there would be no objection in principle to the proposals.

Reporter's findings

Flood Risk

17. Policy LDP 10 (maximising our resources and reducing our consumption) of the Argyll and Bute LDP 2015 supports all development proposals that seek to maximise resources and reduce consumption, providing they meet certain criteria. This includes avoiding areas subject to flood risk or erosion. Further information about the application of the policy is provided in supplementary guidance (SG) SG LDP SERV 7 (flooding and land erosion – risk framework). This sets out the type of development that will generally be permissible within specific flood risk areas. Three broad categories of development are identified, of which two have potential relevance for the proposal site. Within those areas identified as at medium to high risk (1:200 or greater annual probability of flooding), residential, commercial and industrial development within built-up areas may be permissible, providing flood prevention measures to the appropriate standard (1:100 year return period) already exist or are under construction and they use water resistant materials / construction together with a suitable freeboard allowance as appropriate. Development may also be acceptable if it is in accord with flood prevention or management measures as specified in association with a Local Development Plan Allocation or development brief.

18. In all cases, the guidance notes that the planning authority will apply the 'precautionary principle' and refuse proposals that do not meet the criteria for exemption and/ or on the advice of SEPA.

19. NPF4 requires that all development must be assessed against the 0.5% annual exceedance probability flood event (200 year) including an allowance for climate

change. Policy 22 (flood risk and water management) seeks to strengthen resilience to flood risk and to ensure that water resources are used efficiently and sustainably. Part a) of the policy identifies four circumstances where development proposals at risk of flooding may be supported. The first two criteria relate to the location of essential infrastructure, where the location is required for operational reasons and where the development is a water compatible use. Neither of these exceptions apply to the current proposals.

20. Criterion (iii) of part a) allows for “redevelopment of an existing building or site for an equal or less vulnerable use.” Land use vulnerability is categorised as set out in SEPA’s ‘Flood Risk and Land Use Vulnerability Guidance’ (2018). Criterion (iv) allows for redevelopment of previously used sites in built up areas where the local development plan has identified a need to bring these into positive use and where proposals demonstrate that long-term safety and resilience can be secured in accordance with the relevant SEPA advice.

21. 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.

22. The proposals would lead to re-development of an existing building and hence would help to maximise resources and reduce consumption. However, whilst the proposals are for residential and commercial use, I am not aware of any specific flood prevention measures in place or planned to meet the standards set out in policy LDP 10 and SG LDP ENV7. Whilst the proposals do not specifically include for the use of water resistant materials, I note the applicant’s willingness to allow for this and this could be made a condition of any permission that was granted. In addition, the proposals do not appear to be in 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.

23. The proposed re-development works to the ground floor would not result in any change in the vulnerability use class. However, the proposed residential use for the upper floors would represent an increase in vulnerability from Least Vulnerable to Highly Vulnerable, 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. Indeed, as noted, the building is already occupied and in active use.

24. 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, the applicant has placed reliance 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. This assessment, which dates from 2009, appears to have focussed on an assessment of flooding from the burn only (fluvial flooding). Supplemental

information about the characteristics of the burn adjacent to the application site have also been provided.

25. The Flood Risk Assessment for the Lochside Street development did not identify any records of flooding downstream of Lochside Street in the vicinity of the proposal site. However, the council has provided extracts from the WDM Asset Management System, which lists three flood incidents on Stevenson Street since 2012 (i.e. after the date of the submitted Flood Risk Assessment). These relate to locations downstream of the proposal site. In particular, they highlight a potential risk arising as a result of demolition of a building, on the bend of the burn, to the north and west of the site. The rear walls of that building had previously acted to prevent loss of water from the burn at times of fast and high flows. During my site inspection I observed that this site remains vacant and is at a lower level than the proposal site. Nevertheless, the owners of the proposal building have not noted any incidences of flooding from the Black Lynn Burn since around 1982. They comment that recent localised flood events have resulted from inadequate surface drainage from the public road between the application premises and the Black Lynn Burn. No further incidences of flooding have occurred since new road gullies were installed.

26. SEPA has referred to a number of records of historical flooding in the area surrounding the application site. In particular, it notes that Stevenson Street flooded in 2005 to a depth of 2- 3 feet from tidal/coastal inundation only. It also raises concerns that the street could flood from the watercourse on its own, or in combination with the tide and comments that there is a degree of tide locking of the culverts and drains when the tide is high, which could cause serious fluvial flooding if the burn were to become backed up.

27. The applicant has provided qualitative information to suggest that the risks may not be as great as suggested by SEPA's indicative Flood Maps. During my site inspection I saw that the proposal site sits on the eastern side of Stevenson Road, with the Black Lynn Burn lying adjacent to the western boundary of the road. Where the burn flows adjacent to the proposal site, it is contained within a rocky channel, which is supplemented by retaining walls. These rise to a height of approximately 2.9 metres above the bed of the burn and are around 1.1 metres above the height of the neighbouring road. There is a metal beam which spans the watercourse between the banks, below the height of the wall, but well above what appears to be the normal range of variation of flow within the channel. I saw that the wall had a number of cracks and fissures lower down. Nevertheless, at this point, the burn is contained within a reinforced channel.

28. The burn flows northwards and then westwards along the western side of Stevenson Road for approximately 200 metres. It passes under George Street (A85) and Queen's Park Place to meet the coast. These roads appear at grade with the bank top of the burn and I observed some structures within the upper heights of the bank channel, which could act to impede water movement at times of elevated flows.

29. I accept that the SEPA Flood Maps are indicative and designed as a strategic tool to assess flood risk at the community level. Local factors may alter the actual level of predicted flood risk. The constrained nature of the burn adjacent to the proposal site and its height above stream bed level may reduce the indicative risk of flooding and I note that there are no historic records for flooding of the application site itself. However, in the absence of a detailed site specific Flood Risk Assessment it is

necessary to rely on the indicative SEPA Flood Maps. I do not consider the Flood Risk Assessment prepared for a different site, albeit on the same watercourse, to be a sufficient substitute for a site-specific Flood Risk Assessment. That assessment relates to a site upstream of the application site, only considers risks from fluvial flooding and makes no provision for tidal flooding. I have also taken into account SEPA's advice that the report is insufficient. It also commented that new hydrological modelling approaches have been developed and that climate change allowances for river flow and sea level rise have been updated since the report was produced. Further, the submitted Flood Risk Assessment is for a retail and office development, as opposed to residential development.

30. SEPA has suggested 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. This point is acknowledged by the applicant, but they consider that the objections are based on the serious but unlikely coincidence of tidal (temporary) flooding with the need for an emergency evacuation from one of the proposed residential units.

31. I recognise that the residential element of the proposal would be confined to the upper floors and hence potentially above any likely flood levels. I saw that the burn is at a lower level than the proposal site and I also note that there does not appear to be a history of flooding directly outside the proposal site. It may be that the greatest risks would be presented by temporary tidal flooding combined with a medical emergency in one of the proposed flats, but I have insufficient evidence to support that or evidence that safe access could be maintained under those conditions. There appears no possibility of providing mitigation for this risk in the form of alternative access routes. The layout of the site and topography is such that there is no safe or accessible option for exit from the rear of the property, which sits directly adjacent to a near-vertical cliff-face. The applicant has provided an indicative layout for a series of steps and landings to allow emergency escape up the cliff face to Star Brae. However, this would result in an intrusive and substantial addition to the rear of the listed building. Even if such an escape system were an acceptable addition to the building, I conclude that it would still represent a challenging exit route in the case of a medical emergency.

32. Reference has been made to permissions that have been granted for other residential developments and a hotel in the immediate vicinity of the site, although these may also be subject to the same degree of flood risk. Notwithstanding that each application must be considered on its own merits, I note that those decisions were made some time ago, prior to the publication of the most up-to-date Flood Maps and when there were different triggers requiring consultation with SEPA.

33. In summary, the application site is in an area identified as at medium – high risk of flooding from fluvial and tidal sources. The proposal 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 application 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. I therefore conclude that the proposals fail to satisfy Policy

10 and its supporting SG LDP SERV 7 of the Argyll and Bute LDP 2015 and Policy 22 of NPF4.

Effects on the listed building

34. The property is a category C listed building.

35. Policy LDP 3 (supporting the protection, conservation and enhancement of our environment) of the Argyll and Bute LDP 2015 seeks to protect, conserve and where possible enhance the built, human and natural environment. The policy is supported by SG LDP ENV 16(a) (impact on listed buildings). It requires that development affecting a listed building or its setting shall preserve the building or its setting and any features of special architectural or historic interest that it possesses. Developments that affect listed buildings must be of the highest quality and respect the original structure in terms of setting, scale design and materials; be essential to securing the best viable use of the building without undermining its architectural or historic character; and conform to Scottish Historic Environment Policy.

36. NPF4 Policy 7(Listed buildings) also 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.

37. The proposals would require both internal and external alterations to the listed building. A number of internal changes are proposed at the ground floor level, to accommodate the changing demands of the existing business and allow separate access to the upper floors. The upper floors would be sub-divided to create the residential units.

38. The listing description characterises the building as “Mid 19th century, 2-storey and attic, 3-bay rectangular plan workshop. Piend-roofed, slate hung dormers breaking eaves, timber construction above eaves. Street elevation of grey bull-faced squared and snecked rubble, with stugged yellow ashlar dressings, window cills and surrounds, deeply chamfered, droved into arrises. Random rubble rear and side elevations.” The description also refers to the “symmetrical façade of 3 bays, 2 cart arches at ground, re-using dressings. Sliding timber doors in right-hand arch, glazed at top. Narrow window to centre.”

39. The description of the special interest of the building makes no reference to any internal features of importance. The applicant has suggested that much of the building’s original interior detail had been lost prior to listing owing to alterations and a fire. During my site inspection I saw that there did not appear to be any original features or architectural features of historic importance within the building. The ground floor has a number of dividing walls, which appeared modern in layout and construction. The upper floors were more open, with some dividing walls. Again, these did not appear to have any architectural or historic importance.

40. The external changes would involve the replacement of a window at ground floor level by a door, to allow access to the upper levels. In addition to replacement of the existing timber windows, new window openings would be formed in the rear elevation of the upper floors. Four of these would be dormer windows. These have been designed to match the existing dormer windows on the front of the property.

Three rooflights are also proposed. The building would also be re-roofed with Spanish slate.

41. The proposed external alterations would result in some changes in the overall appearance of the building. Nevertheless, the overall visual layout and symmetrical façade of three bays on the western (Stevenson Street) elevation would remain. The proposed replacement windows would be consistent with that set out on the description of the listed building. The proposed new windows to the rear of the property would be of limited visibility, but have been designed to echo those on the front elevation. I understand that the proposed roofing materials have previously been approved for use on listed buildings. Approval of materials could be secured by a condition to any permission that were granted.

42. In assessing the effects of these proposed changes on the listed building, I have taken account of 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. In addition, I note that there have been no objections to the proposed alterations, materials or finishes. I am therefore content that the proposals would be consistent with Policy 3 and SG LDP ENV 16 of the Argyll and Bute LDP 2015.

43. I note that part (a) of Policy 7 of NPF4 requires that any proposals with a “potentially significant impact” on historic assets or places should be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. As the proposal was submitted prior to the adoption of NPF4, no such assessment has been submitted. However, the applicant has provided some details of the history of the building and has taken account of the features of special interest. Given the absence of objection or concern by the council about effects on the listed building, I am satisfied that the proposals would not have a potentially significant impact on the listed building and that hence an assessment would not be required.

Other matters for Ministers’ consideration

44. The proposal is located within the Settlement Zone of Oban. Policy LDP DM 1 (development within the Development Management Zones) of the Argyll and Bute LDP 2015 provides support to sustainable forms of development here, subject to compliance with other relevant policies and supplementary guidance. The proposal partially relates to an existing business. Support for new and existing businesses which help deliver sustainable economic growth throughout the area is also provided by 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). Thus, the proposal gains some support from these policies.

45. The site is located within the North West Argyll (Coast) Area of Panoramic Quality. Policy LDP 9 (development setting, layout and design), requires development to have a high standard of appropriate design and to pay regard to the context within which it is located. The design should also be compatible with the surroundings and particular attention should be paid to massing, form and design details within sensitive locations including Areas of Panoramic Quality. Further guidance is provided by SG LDP ENV 13 (development impact on Areas of Panoramic Quality (APQs)). As noted

above, the proposal is located within central Oban and would require works to a listed building. However, for the reasons set out above, I find that the external changes to the property would be in keeping with character of the listed building and would not have an adverse effect on the listed building or its setting. Hence, I conclude that the proposals would not have an adverse impact on the setting within the wider APQ.

46. The infrastructure requirements of the proposals, including need for parking have been assessed. As it is located within the town centre, there is no requirement to provide parking. Whilst Scottish Water is unable to confirm capacity for water supply, it does not object to the proposals. There have been no objections from any other consultees. Consequently, the proposals comply with the requirements of policies LDP 11 (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).

47. The applicant has highlighted a number of 'spatial principles' within NPF4, which it considers provide support for the proposals. In particular, I have been directed towards principles for conserving and recycling existing assets; 'local living' with the associated benefits to mental and physical wellbeing in being part of an established community directly linked to local facilities; and 'compact urban growth' giving encouragement to use of town centres and opportunities. I accept that the location of the proposal, within the centre of Oban, is consistent with these principles.

Proposed Conditions

48. In granting permission, the council identified two conditions that should be appended. The first relates to implementing the development in accordance with the submitted plans. This is a standard general condition and would be appropriate in this context, particularly given that the property is a listed building.

49. The second condition restricts the use of the proposed flats for Class 9 permanent residential use only and removes permitted development rights in respect of changing use within the Use Class Category. This condition has been appended to enable control of any subsequent change of use. Given the medium – high risk of flooding of the development site and the location of the development, within the town centre, I agree that such a condition is appropriate and necessary.

50. It has been suggested that a condition could be imposed to require the use of water resistant materials. Whilst these could limit damage to the property should flooding arise, their use would not alleviate or mitigate the concerns relating to access to the residential units under flood conditions. Hence I see no justification to include this requirement.

51. I have not identified a need for any other conditions.

Conclusions and recommendation

The development plan

52. As summarised above, 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. However, 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).

53. The applicant has suggested there is a direct conflict between flood and climate change considerations and the spatial principles in NPF4, which encourage 'local living' and 'compact growth' and the emphasis placed on the six qualities of successful places. 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. Thus, I accept there may be occasions where there are some tensions between the desire to re-develop land and changing flood risk conditions as a result of climate change.

54. Notwithstanding that there are no historic records of the property flooding, it is located within an area identified as at medium – high risk of flooding from tidal and fluvial sources on the SEPA indicative Flood Maps. The proposals would result in an increase in land use vulnerability classification from Least Vulnerable to Highly Vulnerable. In addition, they fail 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.

55. The building is currently used and there is no suggestion that this use would cease, should the current application be refused. The scale of risk to human life may be lower than the levels predicted, but there is no site specific Flood Risk Assessment to demonstrate this, and I have no clear evidence that safe access to the residential units could be maintained under flood conditions. Given the strong policy support to avoid development that would represent an increase in land use vulnerability in areas identified as of medium – high risk of flooding, I find that the benefits of the proposal do not outweigh the risks of harm and would not be in accordance with the development plan.

Other material considerations

56. A replacement LDP (LDP2) is in preparation. The plan has been subject to examination and the report of examination has been submitted to the local planning authority. As yet, the council has not yet confirmed whether it will accept the recommendations of the report and move to adopt the plan. Nevertheless, given its stage of development, the proposed LDP2 and examination report are an important material consideration.

57. Policy 55 of proposed LDP2 relates to flooding. Subject to the proposed modifications being adopted by the council, the policy reiterates the requirements of NPF4 Policy 22. It sets a presumption against development on the functional floodplain (land with greater than 0.5% (1 in 200) probability of flooding in any year),

except in limited circumstances. These criteria mirror those set out in NPF4 and which I assessed above. In determining applications, the policy continues to require the planning authority to exercise the 'precautionary principle' and to refuse proposals on the advice of SEPA. Thus, I conclude that the proposed policy modification would make no material difference to the assessment of the proposal.

58. The applicant has highlighted proposed modifications to proposed LDP2 Policy 15 (Supporting the Protection, Conservation and Enhancement of our Historic Built Environment). If adopted the policy sets an expectation that developments involving heritage assets will demonstrate that they would enable positive change by balancing the need to secure the long-term sustainability of the asset against the need to address the impacts of climate change. I have considered this aspect above and concluded that the benefits in this instance do not outweigh the flood risk concerns.

59. In conclusion, I do not find that the emerging policies within LDP2 would substantially or materially alter my assessment of the proposal.

Overall conclusion and recommendation.

60. 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.

61. Therefore, I recommend that planning permission is refused.

62. If Ministers disagree my recommendation and are minded to grant planning permission than I recommend that this is subject to the conditions listed in Appendix 1.

Sue Bell
Reporter

Appendix 1: Recommended conditions

1. GENERAL

The development shall be implemented in accordance with the details specified on the application form dated 03/09/12, supporting information and, the approved drawings listed in the table below unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
Location Plan and Site Plan	10		September 2019
Plans, Elevations and Section As Existing	11	A	September 2019
Plans, Elevations and Section As Proposed	12	C	September 2019
Openings Schedule	13	A	September 2019
Allan Brothers Window & Door Specifications– 8 PAGES			September 2019
Planning Supporting Statement – 2 PAGES			September 2019

Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.

Note to Applicant:

- This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]
- In order to comply with Sections 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start. Failure to comply with this requirement constitutes a breach of planning control under Section 123(1) of the Act.
- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed. Both the Notification of Initiation and Notification of Completion forms referred to above are available via the following link on the council's website:

<https://www.argyll-bute.gov.uk/planning-and-environment/make-planningapplication>

- Please note the advice and guidance contained in the consultation response from Scottish Water details of which is available to view via the following link on the Council's Public Access System. Should you wish to discuss any of the points raised in the response you are advised to contact Scottish Water direct.

<https://www.argyll-bute.gov.uk/planning-and-environment/find-and-commentplanning-applications>

2. Notwithstanding the effect of Condition 1, the proposed flats at first and second floor level shall only be used for Class 9 permanent residential use and for no other use including any other purpose in Class 9 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 and the General Permitted Development Order 1992 (as amended).

Reason: To enable the Planning Authority to control any subsequent change of use which might otherwise benefit from deemed permission in order to protect the amenity of the locale.

Appendix 2: Application drawings

These are as listed under Condition 1 of Appendix 1.