

UPDATE ON RECENT SCOTTISH GOVERNMENT PLANNING APPEAL DECISIONS

19/01858/PP – 37/39 STEVENSON STREET, OBAN

22/01847/LIB – 26 CRICHTON ROAD, ROTHESAY, ISLE OF BUTE

(A) INTRODUCTION

This report summarises two decisions by Scottish Ministers. The first of these relates to a planning application called in for determination. The second relates to the outcome of an appeal decision.

(B) RECOMMENDATION

It is recommended that Members note the content of this report.

(C) BACKGROUND – 19/01858/PP

This report refers to planning application reference 19/01858/PP for the 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 at 37/39 Stevenson Street, Oban.

Planning permission was refused under delegated powers on 22/03/22 due to the proposed development not being considered to be sustainable in terms of flood risk. The proposal would have resulted in the introduction of residential units into an area identified as being at medium to high risk of flooding and which increases the land use vulnerability of the site, contrary to the principles of Scottish Planning Policy, the SEPA Development Management Guidance on Flood Risk and the SEPA Flood Risk and Land Use Vulnerability Guidance. The development was also considered contrary to Policy LDP 10 and Supplementary Guidance SG LDP SERV 7 of the adopted 'Argyll and Bute Local Development Plan' 2015 which require development to be located out with areas of significant flood risk.

A subsequent appeal was submitted to the Local Review Body, reference 22/0004/LRB, who recommended that planning permission be granted and that this intent be notified to Ministers in accordance with the relevant legislation.

SCOTTISH MINISTERS' DECISION

The Scottish Government was notified of the Council's intention to grant planning permission for this development contrary to the advice of SEPA under the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 on the 30 January 2023. On the 1 March 2023, the Scottish Government, under the powers conferred on them by Section 46(1) of the Town and Country Planning (Scotland) Act 1997, issued to the Council a Direction requiring the application to be referred to them for determination.

This report provides an update on Scottish Ministers' decision dated 22 November 2023. Consideration of this proposal was undertaken by a Scottish Government Reporter who then submitted a report containing the conclusions and recommendations to Scottish Ministers. Scottish Ministers accepted these conclusions and decided that planning permission should be refused. The reason for this decision was summarised in the Scottish Ministers' letter as follows:

"Scottish Ministers agree with the reporter's conclusions in terms of the development plan 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".

Ministers also noted that in regards to proposed Local Development Plan 2 "...emerging policies within LDP2 (Policy 55 of proposed LDP2 relates to flooding) would not substantially or materially alter the assessment of the proposed development".

The 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 the decision.

A copy of the letter from Scottish Ministers along with the DPEA Reporter's report is appended to this report.

(D) BACKGROUND 22/01847/LIB

This application for Listed Building Consent was refused by the Council under delegated powers on 21st June 2023. An appeal was subsequently submitted to the Planning and Environmental Appeals Division (PEAD).

As the appeal concerned works to a Category C Listed Building, the Reporter carried out an assessment in accordance with Section 14(2) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (as amended), which required him to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

As the appeal site lies within the Rothesay Conservation Area, in accordance with Section 64(1) of the aforementioned Act, he also paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

The proposed window replacements were also the subject of an application for Planning Permission (ref: 22/01848/PP) and this was also refused on 21st June 2023. The

applicant, Mr Peter Campbell, has sought a review of this decision by the Council's Local Review Body (LRB) and consideration of this matter is presently ongoing.

The first meeting of the LRB on 13th November 2023 requested further information from the Development Management Service in relation to appropriate conditions and reasons should the Members be minded to allow the review and the decision was also made to undertake an accompanied site inspection to view the current windows in the building in question and those of neighbouring properties. The site inspection is due to be held on 11th December 2023.

SCOTTISH MINISTERS' DECISION

In summary, the Reporter considered that the proposed replacement windows on the front elevation would use appropriate materials and replicate the fenestration pattern of the originals when closed and that the use of slim line double glazed units was acceptable in principle. However, the use of dual-swing openings would result in the windows projecting outwards from the façade of the property when open and he was of the view that this would not maintain the authentic character of the historic windows which are sliding sash and case and, as such, would introduce a visually discordant feature.

He also considered that the use of flat profile upvc windows on the rear elevation would fail to maintain the appropriate historic materials and stepped fenestration pattern for this property. Accordingly, he found that the proposed replacement windows on both the front and rear elevations would fail to preserve the listed building and its features of special architectural and historic interest.

In terms of the impacts on the Rothesay Conservation Area, he was satisfied that the windows on the rear elevation would not be particularly visible from any public vantage point within the surrounding area. As such, they would not have a significant adverse effect on the character or appearance of the conservation area. The windows on the front elevation, for the reasons set out above, would introduce a visually discordant feature to this prominent elevation within the street scene. As such, he found that they would fail to preserve the character and appearance of the conservation area.

His conclusion was that the proposed works would fail to preserve the listed building and its features of special architectural and historic interest and would also fail to preserve the character and appearance of the conservation area. He had considered all other matters but there was nothing before him that would lead him to alter his conclusion and, therefore, he dismissed the appeal.

Full details of the appeal documents and decision can be viewed on the PEAD website:

[Scottish Government - DPEA - Case Details \(scotland.gov.uk\)](https://www.scotland.gov.uk/Topics/Information/PEAD/Case-Details)

(E) IMPLICATIONS

Policy: None

Financial: None

Personnel: None

Equal Opportunities: None

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APPENDIX A: PEAD DECISION NOTICE 19/01858/PP
APPENDIX B: PEAD DECISION NOTICE 22/01847/LIB