

**Appeal against refusal of planning
permission to demolish office building
and erect 10 No. units flatted
development (as amended) at Moray
Housing Partnership, Clifton Road,
Lossiemouth, Moray**

**Moray Council planning reference
17/01220/APP**

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1.0 BACKGROUND, PROPOSAL AND GROUNDS OF APPEAL

1.1 Lippe Architects and Planners submitted a planning application for full planning permission on behalf of Osprey Housing Moray with application reference 17/01220/APP for a proposed flatted development of 15 units. The application was validated on 14 August 2017 and refused under delegated powers on 9 November 2017. During discussions on the application, the proposal was amended on two occasions, first to a reduced development of 12 flats and finally to a further reduced development of 10 flats which was the final version and that which was refused on 9 November. This appeal is submitted to Moray Council Local Review Body.

1.2 The reasons for refusal are:

The proposal is contrary to the provisions of the Moray Local Development Plan 2015 (Policies PP3, H1, BE2 and IMP1) for the following reasons:

1. *The three storey Block will be unduly obtrusive and dominant in the established street scene and would not contribute to the established sense of place in this part of Lossiemouth and would not be appropriate to the scale and character of the surrounding area contrary to policies PP3, H1 and IMP1.*
2. *The three storey Block B fails to reflect the style, form or scale of the adjoining listed buildings and would dominate the setting of these buildings to an unacceptable degree contrary to BE1.*
3. *The three storey Block B would give rise to overlooking of neighbouring properties and would adversely impact on the amenity of neighbours contrary to policy IMP1.*
4. *The proposed off-white render on Block B is not in keeping with the finish of surrounding buildings and would result in a building that was not adequately integrated into its surroundings contrary to policy IMP1.*

1.3 The proposal seeks to demolish the existing Moray Housing Partnership office building on the site and erect 10 flats. Osprey Housing Moray, the appellant, are looking to relocate their offices and the site on Clifton Road is therefore surplus to requirements and represents an excellent opportunity to provide low-cost and affordable housing in a central, easily accessible location.

1.4 For clarity, although the application sought approval for 15 units, the appeal is based on the revised proposal for 10 units. The application was submitted on 14 August 2017 as a development of 15 flats contained within 1 modern three storey block which ran along the front of the site on Clifton Road and wrapped around the site along the

mutual boundary to the east. In response to the planners comments regarding materials, the aesthetic look of the development and the number of properties proposed, the proposal was then reduced in numbers and scale to a development of 12 flats still contained within 1 block along the front and east of the site, but with a lower two storey section on the elevation facing Clifton Road. The two storey block facing Clifton Road was also altered to reflect the more traditional style of the neighbouring buildings particularly to the east. This was submitted on 5 September 2017. Again, to the further address concerns the planner noted, the proposal was significantly altered to contain the development instead within two separate blocks, keeping a more modern designed three storey block but moving it well away from the mutual eastern boundary into a more central location within the site and keeping the block on Clifton Road at two storeys and of a traditional design. This was submitted on 19 September 2017. This demonstrates there has been a consistent dialogue with planning officials to alter the proposal to an acceptable level in terms of numbers and layout, siting and design.

- 1.5 The surrounding buildings and style of development in the surrounding area vary greatly but generally speaking it is a higher density area with flats, small terraces and semi-detached properties and smaller detached houses. There is a three storey block of flats to the immediate west of the appeal site. Planning permission exists to build two large three storey houses to the rear (north) of the application site. Numbers 22 and 24A Clifton Road are category C(s) listed buildings (No24 appears as No23 on the Ordnance Survey). The buildings were downgraded from a B-for-group listing in 1988. Number 24 is a category B listed building.
- 1.6 As can be seen in the photomontages included in the originally submitted design statement, while the materials, colours and design were utilised to 'break up' the elevation facing Clifton Road, the amended plans are more sympathetic to the immediately adjacent listed building. The new building is only two storeys high instead of three and incorporates a more traditional style and design. A sense of place is created with this solution.
- 1.7 It is also considered relevant to highlight that a previous planning permission has been granted for a development of ten flats on the site on 12 November 2007. In comparison to the appeal proposal, the development has no open space, inadequate car parking, no affordable housing and no accessible housing. The blocks proposed in the appeal are also in the same location as those which were previously granted planning permission, albeit six of the flats were contained within a conversion of the office building with a new two storey block of four flats to the rear.
- 1.8 It is important to note that the planning officer accepts the principle of redevelopment of the site for housing use and that the proposal complies with a number of planning policies and requirements including affordable housing, housing mix and accessible housing, open space, surface water drainage and foul drainage, pollution, access and parking and developer obligations. The planning officer acknowledges that in principle the development does not adversely impact on the surrounding environment and that

adequate services and infrastructure are available. The only reason that has been given for refusing the application relates to Block B, a three storey block in the middle of the site.

1.9 The appeal shall therefore focus on demonstrating that Block B:

- Is not obtrusive in the street scene or detrimental to sense of place
- Does not dominate the setting of the neighbouring listed buildings and is of a suitable style, form and scale
- Does not give rise to overlooking or adversely impact on the amenity of neighbours
- Is acceptable in terms of the proposed off-white render.

2.0 POLICIES AND MATERIAL CONSIDERATIONS

The Moray Structure Plan 2017

- 2.1 The strategic priority is to focus development on existing settlements with Elgin, Forres, Buckie, Keith and Lossiemouth as main development areas. This is consistent with national planning policy and sustainable development. It reinforces the function of existing settlements making cost effective use of services and facilities and can reduce impact on the environment by helping to sustain public transport and enabling greater use of cycling and walking. Focusing development on existing settlements also requires strategic choices to be made in relation to the primary receptors of new development.
- 2.2 It is noted that Moray is a dispersed and diverse area where it is not possible to predict precisely where future development will take place. In addition, there is a considerable level of housing need as well as demand. Therefore, it is proposed to build in an element of over provision as a means of flexibility in providing an adequate range and choice of sites.
- 2.3 With regard to Environment and Resources the Structure Plan needs to balance the protection and conservation of the environment with the need to support and develop the economy and provide recreational opportunities. Moray has a diverse, high quality and perhaps unique environment and the strategy seeks to safeguard and enhance the high quality of both its natural and built environment assets. This can be achieved by protecting the most valued elements and by ensuring that development respect the qualities of the wider environment.
- 2.4 With regard to the Built Environment the conservation, enhancement and promotion of Moray's built heritage is therefore important. In particular, this will mean safeguarding listed buildings, ancient monuments, archaeology and designed landscapes and to retaining buildings, townscapes and artefacts which are part of Moray's character and identity.

The Moray Local Development Plan 2015

- 2.5 A number of policies are applicable to this proposal. The LDP policies which are referred to in the reason for refusal are highlighted in bold.

- 2.6 Primary Policy PP2 lists a number of factors to be addressed in developments of 10 or more houses in order to contribute towards reducing greenhouse gas emissions.
- 2.7 **Primary Policy PP3 states that all residential and commercial (business, industrial and retail) developments must incorporate the key principles of Designing Streets, Creating Places and the Council's supplementary guidance on Urban Design. Developments should:**
- **create places with character, identity and a sense of arrival**
 - **create safe and pleasant places, which have been designed to reduce the fear of crime and anti-social behaviour**
 - **be well connected, walkable neighbourhoods which are easy to move around and designed to encourage social interaction and healthier lifestyles**
 - **include buildings and open spaces which incorporate sustainable design and construction principles**
 - **have streets which are designed to consider pedestrians first and motor vehicles last and minimise the visual impact of parked cars on the street scene**
 - **ensure buildings front onto streets with public fronts and private backs and have clearly defines public and private space**
 - **maintain and enhance natural landscape features and distinctive character of the area and provide new green spaces which connect to green and blue networks and promote biodiversity**
 - **the Council will work with developers and local communities to prepare masterplans, key design principles and other site specific planning guidance as indicated in the settlement designations**
- 2.8 **Policy H1 – Housing Land states that land has been designated to meet the strategic housing land requirements for 2013-2025 in the settlement statements. Proposals for new housing on land not designated for residential development within settlement boundaries will be acceptable if the proposal does not adversely impact upon the surrounding environment, adequate servicing and infrastructure is available or can be made available, the site is not designated for an alternative use and the requirements of policies PP2, PP3 and IMP1 are met.**
- 2.9 Policy H8 – Affordable Housing states that proposals for new housing developments of 4 or more units must provide 25% of the total units as affordable housing.
- 2.10 Policy H9 – Housing Mix/Accessible Housing states that proposals for multiple houses *must meet the needs of smaller households, older people and other needs (e.g. extra care housing)* identified in the Council's Housing Need and Demand Audit.
- 2.11 Policy E5 - Open Spaces states that development which would cause the loss of or adversely impact on areas identified under the ENV designation in settlements and the amenity land designation in rural groupings will be refused unless a number of criteria can be met. Provision of new green spaces should be provided on residential sites of 10-50 units and require a minimum requirement of 15% open space.

- 2.12 **Policy BE2 – Listed Buildings** states that the Council will encourage the protection, maintenance, enhancement and active use of listed buildings. Development proposals will be refused where they would have a detrimental effect on the character, integrity or setting of the listed building. New development should be of a comparable quality and design to retain and enhance special interest, character and setting of the listed building. Proposals should be in accordance with guidance set out in **Scottish Historic Environment Policy and the Managing Change in the Historic Environment guidance note series**.
- 2.13 **Policy EP5 – Surface Water Drainage : Sustainable Urban Drainage Systems (SUDS)** states that surface water from development should be dealt with in a sustainable manner that has a neutral effect on the risk of flooding or which reduces the risk of flooding.
- 2.14 **Policy EP8 – Pollution** states that planning applications for developments that may cause significant pollution in terms of noise (including RAF aircraft noise), air, water and light emissions will only be approved where a detailed assessment report on the levels, character and transmission of the potential pollution is provided by the applicant.
- 2.15 **Policy EP10 – Foul Drainage** states that all developments within or close to settlements (as defined in the Local Development Plan) of more than 2000 population equivalent will require to connect to the public sewerage system unless connection to the public sewer is not permitted due to lack of capacity. In such circumstances, temporary provision of private sewerage systems may be allowed provided Scottish Water has confirmed investment to address this constraint has been specifically allocated within its current Quality Standards Investment Programme and the following requirements apply.
- 2.16 **Policy T2 – Provision of Access** requires that new development proposals are designed to provide the highest level of access for end users including residents, visitors and deliveries appropriate to the type of development and location.
- 2.17 **Policy T5 – Parking Standards** states that proposals for development must conform to the Council's current policy on parking standards.
- 2.18 **Policy IMP1 – Developer Requirements** states that new development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. One of the requirements of this policy is that the scale, density and character of development must be appropriate to the surrounding area.
- 2.19 **Policy IMP3 – Developer Obligations** states that contributions will be sought from developers in cases where, in the Council's view, a development would have a measurable adverse or negative impact upon existing infrastructure, community facilities or amenity, and such contributions would have to be appropriate to reduce, eliminate or compensate for that impact.

Scottish Planning Policy 2014

- 2.20 The aim of SPP is to ensure that development and changes in land occur in suitable locations and are sustainable. The primary objectives are to set the land use framework for promoting sustainable economic development, to encourage and support regeneration to maintain and enhance the quality of the natural heritage and built environment.
- 2.21 In terms of valuing the historic environment, the National Planning Framework 3 recognises the contribution made by our cultural heritage to our economy, cultural identity and quality of life. Planning has an important role to play in maintaining and enhancing the distinctive and high-quality, irreplaceable historic places which enrich our lives, contribute to our sense of identity and are an important resource for our tourism and leisure industry.
- 2.22 The historic environment is a key cultural and economic asset and a source of inspiration that should be seen as integral to creating successful places.
- 2.23 The siting and design of development should take account of all aspects of the historic environment. Where planning permission and listed building consent are sought for development to, or affecting, a listed building, special regard must be given to the importance of preserving and enhancing the building, its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which will affect a listed building or its setting should be appropriate to the character and appearance of the building and setting.

Scottish Historic Environment Policy 2011

- 2.24 SHEP correctly recognises that the protection of the historic environment is not about preventing change but that change in this dynamic environment should be managed intelligently and with understanding to achieve the best outcome for the historic environment and that the historic environment has a key role to play in regeneration.

Historic Environment Scotland Setting Guidance Note

- 2.25 Managing Change in the Historic Environment: Setting is a non-statutory guidance note about managing change in the historic environment. The guidance note sets out the principles that apply to developments affecting the setting of listed buildings. It details that the impact of a proposed development on the setting of a historic asset or place can be a material consideration in determining whether a planning or other application is given consent, so thought must be given to whether new development can be incorporated sensitively.

3.0 DISCUSSION AND CONCLUSION

- 3.1 The first reason for refusal relates to the three storey Block B being obtrusive and dominant in the street scene. Block A which fronts onto Clifton Road is the main part of the development that will be readily visible in the street scene and this has been accepted. Block B is set back into the site by approximately 24 metres and is also located behind Block A and any view of it is therefore obscured particularly when viewed from the east. In addition, the existing three storey block of flats at number 30 Clifton Road to the immediate west of the appeal site is more prominent. The delegated report for the appeal site notes the existence of the neighbouring three storey block but that this is "at odds" with the modest traditional proportions of surrounding buildings. However, nonetheless it exists and is a point of reference for the height of new development. This three storey building will still remain a more dominant feature in the street.
- 3.2 In terms of impact on the street scene, while the two dwellinghouses which have been granted to the rear of the appeal site are accessed from Quarry Road to the rear and not Clifton Road, as can be seen in the approved drawings these houses are three storeys high on the side facing Clifton Road. It is anomalous that the planning officer for that application has no concerns about visual impact on the street in comparison to the appeal proposal. What is more concerning is that the officer's report of handling for the two dwellinghouses, while mentioning the houses should be set within the precipitate site contours (steep), notes that the houses would be a "very high" three storey element when viewed from the south-east. It is also stated in the report of handling that "the land rises to the north beyond the site so the houses built to the north would sit well about the level of the proposed flats". It is therefore argued that the far more dominant and obtrusive development when viewed from Clifton Road are the two dwellinghouses to the rear and not the appeal site. In addition, the planning officer for the appeal site acknowledges that the two dwellinghouses would "sit some way above" the proposed appeal site. It is therefore clear that there is already permission for a more dominant development in the vicinity of the appeal site. It is also not correct to say, as the officer has done in the delegated report, that the impact of the appeal development will be "keenly felt on views from the beachfront area" given what exists adjacent to the east, what has been granted permission to the north, given the height and design alterations that have been made to Block A and the relocation of Block B.
- 3.3 The second reason for refusal relates to the development dominating the setting of the neighbouring listed buildings and failing to reflect the style, form or scale of these.

In terms of the neighbouring listed buildings in a townscape context, the development will not affect the front elevation of these buildings. The development is located well to the rear of the buildings having far less of an impact. In addition, Block B has been located away from the mutual boundary and is now located centrally in the site to ensure a greater separation distance of a minimum of 18.25 metres from the mutual boundary. The main vista of the site is the elevation facing Clifton Road with Block A located on the street frontage. Block A has been reduced in height and designed in a more traditional form so it is the dominant street feature. It is argued that while the more modern design approach is still being taken with Block B, the relocation of the Block and its position behind Block A designed in the more traditional style mitigates any detrimental impact.

- 3.4 Again, it is argued that the two dwellinghouses have a more dominating impact on the overall street scene and setting of the neighbouring listed buildings. The two dwellinghouses are also of a modern design with materials completely unrelated to the neighbouring listed buildings. There is again inconsistency in the way the planning applications for the dwellinghouses and the appeal site have been approached and determined.
- 3.5 The third reason for refusal relates to Block B overlooking neighbouring properties. It is acknowledged in the report of handling that in response to representations that “privacy and overlooking issues have largely been addressed” and that Block B is “now reasonably separated from the existing houses to the east” and that “this separation will protect privacy”. How then, can the officer go on to say that there is still “potential for overlooking”. Block B is located at between 18.25m and 19.5 away from the mutual boundary to the east which is more than the 18m accepted minimum standard to protect privacy. The fact that Block B is three storeys makes no difference to the minimum distance or potential for overlooking and the proposal is therefore acceptable in this regard.
- 3.6 The final reason for refusal relates to the use of off-white render for Block B. The number of styles and materials present in the immediate vicinity of the site varies greatly, although it is appreciated that the neighbouring listed buildings are traditionally constructed. However, an important consideration is again the approval for the development of two dwellinghouses to the immediate rear of the appeal site. The houses also incorporate off-white render along with light grey and teal timber cladding which could be argued as certainly no less sympathetic to the surrounding area. The use of an alternative colour of render could be considered.
- 3.7 To conclude, the above demonstrates that the proposed development is not contrary to the Moray Local Development Plan 2017. However, it is also important to note that in terms of the Structure Plan, the central location of the site is sustainable given the reuse of the brownfield site and proximity of public transport and services. The development will also provide housing where there is an identified need as well as demand, providing a choice of properties in a sustainable location. With regard to the

built environment it has been demonstrated that there is not a negative impact on the neighbouring listed buildings and therefore the wider environment is respected.

- 3.8 In terms of SPP 2014 the development complies as it is located in a suitable location and will support regeneration. In terms of SHEP 2011, the development will not have a detrimental impact on the neighbouring listed buildings and while protection of the built environment is important, change can still be incorporated successfully as is the case with this proposal. It is therefore contended that the proposals meets all the criteria in Scottish Government and Historic Environment Scotland guidance.
- 3.9 In conclusion, as described in the evidence submitted and commentary above, the development is not obtrusive or dominant and will not cause amenity issues. It is therefore respectfully requested that the appeal is upheld and that planning permission for the development be granted.