

NOTICE OF REVIEW

Under Section 43A(8) Of the Town and County Planning (SCOTLAND) ACT 1997 (As amended) In Respect
of Decisions on Local Developments
The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND)
Regulations 2013
The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.

**PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS
ELECTRONICALLY VIA <https://www.eplanning.scot>**

1. Applicant's Details		2. Agent's Details (if any)	
Title	Mr & Mrs	Ref No.	
Forename	Michael & Marie	Forename	
Surname	Murray	Surname	
Company Name	Shawfern Group Limited	Company Name	
Building No./Name	Dowans Hotel	Building No./Name	
Address Line 1	Dowans Road	Address Line 1	
Address Line 2		Address Line 2	
Town/City	Aberlour	Town/City	
Postcode	AB38 9LS	Postcode	
Telephone	01340871488	Telephone	
Mobile		Mobile	
Fax		Fax	
Email	enquiries@dowanshotel.com	Email	
3. Application Details			
Planning authority	Moray Council		
Planning authority's application reference number	19/01014/APP		
Site address	Hotel 1881, Archiestown AB38 7QL		
Description of proposed development	<div style="border: 1px solid black; padding: 5px;"> Renovation, under strict commercial budgetary limitations, of a significantly deteriorating hotel building with the objective of re-energising a rapidly failing business, in order to provide a social amenity on the side of the Speyside Valley that has absolutely no other alternative facility available to the community. </div>		

Date of application

16/08/19

Date of decision (if any)

18/10/19

Note. This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

4. Nature of Application

Application for planning permission (including householder application)

Application for planning permission in principle

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)

Application for approval of matters specified in conditions

5. Reasons for seeking review

Refusal of application by appointed officer

Failure by appointed officer to determine the application within the period allowed for determination of the application

Conditions imposed on consent by appointed officer

6. Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

Further written submissions

One or more hearing sessions

Site inspection

Assessment of review documents only, with no further procedure

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

In addition to our written submission below, we would strongly request that an on-site meeting between ourselves and the Local Review Committee is held.

7. Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

Can the site be viewed entirely from public land?

Is it possible for the site to be accessed safely, and without barriers to entry?

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

I would very much appreciate meeting with the Local Review Committee in order to fully explain our position in detail whilst the site itself is still under construction and, hence, from a Health & Safety Perspective, we would request that an accompanied visit takes place.

8. Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

Our Reasons for this appeal are included in the attached supporting document.

Have you raised any matters which were not before the appointed officer at the time your application was determined? Yes No

If yes, please explain below a) why your are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

I have stated yes to the above questions as we strongly believe that the well established UPVC related planning precedents existing generally in Archiestown and specifically at Hotel 1881 (previously known as Archiestown Hotel) prior to our purchase of the hotel, aligned with the subsequent unchallenged acceptance of UPVC installations in other buildings in the village after our installation of the new windows, were not fully or fairly considered during the determination process of our application. In short, we strongly believe that we have been discriminated against in the assessment of our application when viewed in the context of the established UPVC planning related practices in Archiestown that have been, and continue to be, permitted/accepted by the Moray Council Planning Department.

Indeed, it was the existence of these precedents in the village that were a major and crucial contributory factor in our decision to purchase the hotel in the first place as our pre-acquisition assessment of the necessary spends on this major renovation project determined that the acquisition was only commercially viable with the inclusion of economically viable replacement windows.

9. List of Documents and Evidence

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

Detailed Explanation of Our Position

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

10. Checklist

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

Full completion of all parts of this form

Statement of your reasons for requesting a review

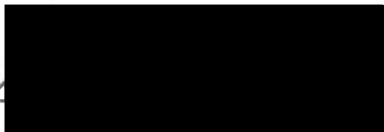
All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

DECLARATION

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:



Name:

Michael S & Marie Murray

Date:

05.01.20

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.

Planning Permission (19/01014/APP) Rejection Appeal

Hotel 1881, Archiestown

The following is being attached to our appeal request in respect of the rejection of our above referenced planning permission application.

Summary

We would argue, in the strongest terms possible, that there has been no actively managed or maintained conservation area in existence in the Archiestown village for many years and hence our submission should not have been measured by such standards. However, if the Authorities do argue that there is still an actively managed conservation area then we would then contend that the Planning Rules and Regulations have been, at best, applied in an inconsistent manner within the confines of the Archiestown village and, at worst and far more concerningly, in a discriminatory manner towards our own application to replace windows at Hotel 1881 (previously known as the Archiestown Hotel). As we will demonstrate below the village, and hence the conservation area, of Archiestown has very many buildings with modern (UPVC etc) windows, doors and attic windows installed. No more than a quick five minutes inspection of the village will provide a confirmation of the accuracy of this statement. Most of these modern installations were in existence prior to our replacement of the windows in Hotel 1881, including in the Archiestown Hotel itself, though there are also examples of more recent installations that have been implemented subsequent to our window replacement programme. There is no justifiable reason or logic for this inconsistent application of Planning Rules and, hence, our simple request is for the Planning Department's decision to reject our application to be over-ruled and for our Planning Permission to be issued now.

Background

We acquired the Archiestown Hotel on the 17th September 2018. Having successfully revived the fortunes of the Dowans Hotel in Aberlour, we were on the lookout for another opportunity where we could reaffirm our commitment to the development of the Speyside area.

Our commitment to the area is, we would offer, readily demonstrated by our works at the Dowans where we have invested over £2m in the renovation of the building, using local contractors and locally sourced materials; we have contributed significantly to the Tourism growth experienced over the last 6 years in the area and increased local employment from the inherited three staff members on acquisition to the near forty headcount that we have today. Indeed, I (Michael Murray) also sit on the Spirit of Speyside Board which, as you may know, is a voluntary commitment to the economic development of the area whilst our youngest daughter (Lauren Murray) sits on the sub-board of the Festival with a focus on developing the opportunities within the Gin industry. Meanwhile, our eldest daughter (Stephanie Murray) sits on the T-Bid Board. However, whilst we are fully committed to the

Speyside area nevertheless our acquisition of the Archiestown Hotel was not a philanthropic one but rather was a totally commercially driven investment.

Our pre-acquisition assessment of the Archiestown Hotel was that it was a rapidly failing business whilst the fabric of the building would require significant upgrading in order to preserve and restore it and to, consequentially, provide the quality product that the increasingly discerning tourist expects today. Indeed, our pre-acquisition concerns about the buildings' fabric, and its significantly deteriorating state, have been far exceeded by the realities that we have experienced during the renovation project where many door and window lintels were totally rotted and no longer in existence and, hence, posing a real possibility of building collapse whilst the windows (combination of wooden and modern) were in a poorer state of repair than our initial assessment had indicated. These are merely two examples of the poor state that the building was in when we bought it.

At this point, we must strongly highlight that as a part of our pre-purchase decision making we sought professional advice which concluded that the UPVC precedents existing in both Archiestown and the Archiestown Hotel itself (and some of these modern windows in the hotel remain in existence today) indicated that the conservation area was no longer being actively managed by Moray Council and hence the installation of UPVC windows in Hotel 1881 would be accepted by The Planning Department in the same manner as the existing precedents in the village had been accepted previously.

It is acknowledged that Moray Council were not specifically asked to confirm their agreement to the window replacement at Hotel 1881 and nor were they involved directly in our purchase decision making. However, it remains a key point of contention, for further pursuit as necessary in the future, that the existence of the many unchallenged UPVC precedents existing in the Archiestown village prior to our acquisition meant, in effect, that Moray Council had given their tacit approval of them and hence it was a totally reasonable and supportable position for us to fully rely upon these Moray Council accepted precedents in our acquisition decision making process. So, perhaps there was no direct involvement by Moray Council but certainly it is very arguable, at the very least, that we had every right to rely legally, in our decision to purchase the Archiestown Hotel, upon the implicit guidance offered by the practices of Moray Council's Planning Authorities in their acceptance of these precedents.

As stated above, the acquisition of the Archiestown Hotel was purely a commercial decision. We have already invested £1m in this renovation project which simply cannot afford the significant additional cost that would be required to replace the windows that are now installed. The return period on the investment has already been significantly extended and we are not prepared to have it extended any further.

Hence if Planning Permission is not issued for the currently installed windows then we will be left with no option but to board the building up as, due to covenant requirements, we cannot open the facility without Planning Permission having been fully issued. Now, whilst this would mean for us a failed investment project it would be totally remiss of us to not also note here the other important consequences of such a position:

- There would be negative consequences for Local Tourism which the Visit Scotland Chairman and Moray Tourism Head will readily testify to their assessment of a multi-million pounds annual impact on Moray/Speyside from a permanent closure of Hotel 1881. This, they have already communicated to Moray Council, but these gentlemen stand prepared to restate this in the future to which ever forum, as necessary.

- There would be a negative impact on the local economy from the lost employment opportunity of a magnitude equivalent to the levels achieved at the Dowans.
- There would be the consequential prevention of the provision of a social amenity for the local community on that side of the valley which is totally bereft of such facilities currently.

Is our understanding wrong that amongst its various responsibilities, The Planning Department also has Economic Development as one of its key objectives?

Archiestown Conservation Area Contradictions & Precedents

Our Planning Permission submission to replace windows and install wood-effect concrete cladding to part of the side of the building was rejected by The Planning Department on the 18th October 2019. The full reasoning for the rejection can, of course, be provided by The Planning Department but, in essence, the arguments that they included in their refusal decision can be précised as being their evaluation that the works “would not preserve or enhance the character of the building or conservation area” and would “introduce a visually intrusive feature into the historic streetscape”.

We would address these points as follows:

- Fundamentally, there is more than ample evidence in support of our contention that there has been no active management or maintenance of the Archiestown conservation area by the Planning Authorities of Moray Council for many years and hence it was incorrect to assess our Planning Submission by such standards. We would argue that no active conservation area, or management therefore, would automatically mean that terms like “historic streetscape” and “conservation area” become irrelevant today when reviewing planning requests in respect of buildings within the Archiestown village.
- Equally, it is a factually correct statement to advise here that the currently existing building is not, in any relevant way, an historic representation of the “historic streetscape” either and hence that is a rather spurious argument that is being offered by the Planning Department. The Archiestown Hotel suffered from significant fire damage in the 1970s. Following the fire, the building was entirely remodelled with an additional floor added and a mansard style roof added. This remodelling substantially, if not completely, altered the style, shape and architecture of the building. A painting of the original, traditional Scottish styled building can be seen on the community notice board in front of the hotel. Hence, it appears to be being argued by Planning Department in their refusal of our Planning Permission application that it is crucial to the historic streetscape to preserve untouched a 1970s building of indifferent architectural value.
- The replacement windows chosen were the only economically viable option available to our commercially driven decision to purchase the Archiestown Hotel. If we had understood that there would actually be the requirement to replace rotten windows with like-for-like units then we would never have proceeded with the acquisition in the first place as such an additional cost would have made the entire project unviable from any logical business perspective.
- And for the avoidance of any doubt, the Archiestown Hotel had been up for sale for nearly 10 years prior to our acquisition of it so it should in no way be considered that if not us then there were a multitude of other investors out there ready to take on such a project. And if not us then the business and building would most likely have travelled further downhill resulting ultimately in the permanent loss of what is today a scarce resource in Speyside, namely hotel accommodation.
- The replica windows were designed to replicate those that were being replaced in terms of style and appearance. It is strongly argued that no lay person in passing would likely be able to

identify any major difference between the "two materials" and that they, therefore, do fully preserve the character of the building.

- Indeed, it is strongly further argued that, in fact, their installation has enhanced the character and appearance of the building by the mere fact that they have replaced considerably, and very obviously, rotted and broken units. The local community would readily testify to the enhanced appearance of the hotel following our works, if asked.
- Given that the "historic streetscape" was already abounding with UPVC windows, doors and attic window precedents in both the Square and the wider Archiestown village prior to our arrival, what is the real justification for The Planning Department to state that these windows installed by ourselves represent an intrusive feature in the "historic streetscape" whilst they are prepared to accept that the other many examples in existence within the village have not been deemed by them to be an intrusive feature within it?
- Indeed, the Archiestown Hotel had modern windows installed prior to our acquisition of it. Some of these UPVC windows remain installed today in the hotel and were shown to the Head of Moray Council Planning Department during a site visit.
- Indeed, if it is actually being argued that the Archiestown conservation area has continuously been actively managed then why have the multitude of UPVC installations in both Archiestown Village, and including the Hotel itself, that have been implemented over the preceding years, and indeed the more recent ones subsequent to our window installation, never been challenged and subjected to the issuance of enforcement notices by Moray Council?
- If our belief of no active conservation area management is wrong and the Archiestown conservation area has indeed been subject to continuous management then The Planning Department will readily be able to demonstrate the many enforcement notices that they have issued in the area for the "contrary to the rules" UPVC installations?
- In fact, if the conservation area has been actively managed and notices have not been issued then it confirms that The Planning Department have reviewed the situation(s) and deemed these UPVC installations to be acceptable and have effectively, therefore, issued tacit planning permission by default.
- If the counter argument, however, is then offered that no planning permissions have been issued, tacitly or otherwise, then The Planning Department are then acknowledging that they have been effectively accepting of and presiding over an increasingly illegal environment which is hardly a responsible position for an Authority to adopt, is it?
- Further, we have now been advised that whilst in the ownership of Moray Council the council houses in the village had UPVC replacement windows installed. Why was it acceptable for Moray Council to install UPVC windows in the conservation area but for our application to be rejected for using the same material?
- If this is an "historic streetscape" then it is one where the installation of a portacabin in it was the subject of a successful planning application. It is consequentially a reasonable interpretation from such a situation to infer that it is the belief of the Authorities that a portacabin "enhances or preserves" the historic streetscape whilst our replica windows are deemed to fail this test by them. What is the logic and reasoning behind this rather obvious contradictory and flawed decision making?
- We have also been advised that it is the local understanding that the Archiestown conservation area was originally established because of the grid pattern of the village as opposed to the actual buildings themselves. A request for clarification of this point was made to The Planning Department but they advised that they could find no documentation to support or contradict this local understanding.

- If the conservation area does indeed include the requirement for all buildings to be built with traditional materials then why were modern buildings with a dry pebble dash render, which cannot be classified as a traditional Scottish building material, ever permitted to be built within the Square and hence conservation area?
- As a part of our planning permission submission, we also sought authority to cover a portion of the side of the building with wood-effect concrete cladding (from a distance of a metre they are indistinguishable from painted wood) but this was refused as it was deemed that concrete was not a traditional building material. And yet a portion of this side of the building is currently covered by UPVC cladding. If the wood-effect concrete cladding continues to be assessed as an unacceptable material, then perhaps the preference would be to leave untouched the current UPVC cladded section and for us to use this precedent and extend its use to cover the other adjoining sections?
- In fact, it was also pointed out by us that the other side of the hotel from where we wish to install the wood-effect concrete cladding is presently covered in concrete rough casting and hence, again, concrete has been an accepted wall covering on the building long before ourselves owning it. Indeed, there are other buildings with rough cast covering within the village. So why this inconsistency in the application of the Planning Rules and Regulations concerning concrete/traditional materials by the Authorities been implemented?
- As part of our discussions with them, we sought a clear definition from The Planning Department of what the term "historic streetscape" actually meant but they were not in a position to answer the question. So, we would again ask formally here, if our Planning Permission remains rejected and the term remains relevant, then what does "historic streetscape" mean? Does it refer to the period when the Hotel was first built back in 1881? Or does it refer to the period when the hotel was fully re-modelled in the 1970s? Or does it refer to when a portacabin was installed on the "streetscape"? Or was it when UPVC windows were installed in various properties in the village including those owned at the time by Moray Council? Or does it refer to the period when UPVC cladding and windows and concrete roughcasting were installed on Hotel Archiestown? Or when modern buildings were newly built into the "streetscape"? The relevancy of the question is that if we are being required to "preserve the character of the historic streetscape" then somebody should surely be able to define what it is to us and explain clearly why our UPVC window installation and wood-effect cladding are not preserving or enhancing the current "historic streetscape"?
- In fact, whatever the definition of "historic streetscape" that is ultimately offered it simply has to be acknowledged, we would argue, that today the "historic streetscape" includes accepted UPVC installations and hence our windows should indeed be assessed as "preserving the historic streetscape" by the mere fact that they are matching what exists in it today rather than the interpretation that been placed upon them by The Planning Department of not "preserving the historic streetscape". If our logic is not agreed then I would ask for a very clear explanation, including directly comparison to the actual situation in existence in the village today, to be given of the reasoning used by The Planning Department in their decision.
- Can Moray Council also confirm that if our planning permission, as submitted, is to continue to be ultimately rejected that all current UPVC installations in the village will then be subjected immediately to the same condition and, therefore, be issued with early enforcement notices for them to be replaced so that the stated objective of "preserving and enhancing the character of the conservation area and historic streetscape", as offered by The Planning Department as the reason to reject our submission, will then be consistently applied to all?
- Will Moray Council further confirm that any future new building developments in the Archiestown area, including any current proposals that may be in a development stage, will also

have the same requirements placed upon them where no use of UPVC in the build and only totally traditional materials for wall coverings will be accepted?

- Given this deeply frustrating situation that we find ourselves in, we have to ask who in the Moray Authorities takes responsibility for the promotion and support of economic growth in the region and offers an understanding of the larger global picture rather than simply supporting the blind application of regulations when said regulations have clearly been demonstrated to be no longer relevant or applicable?
-