



Design Statement

20:43 Planning Application to retain windows installed to Craighmor, 76 St Leonards Road, Forres for Mr S Waterson

History

The dwelling was purchased by the applicant who has undertaken careful modernisation and restoration of the property to bring it up to modern living standards and thermal efficiency. These improvements will extend the life of the traditional property for generations to come. The replacement of the original windows was part of this work.

The company who installed the uPVC windows were to apply for planning permission, which they did however they proceeded to install the new windows before the application was determined. The application was subsequently refused. The applicant was unaware of this and as a result did not have the opportunity to appeal. An enforcement notice was subsequently issued to the applicant. The applicant appealed the enforcement notice however it was upheld. The reporter suggested that a second planning application could be submitted in the interest of natural justice.

Design Statement

Although uPVC frames have been used, care has been taken in the design and detailing of the new windows to replicate the detailing, proportion, opening method and colour of the existing windows. This retains the style and character of the existing sash and case windows both from a distance and up close as follows;

- The new windows have no additional astragals or mullions which were not present on the original windows.
- The proportion of the top sash and bottom sash match the existing windows in terms of scale and size.
- The existing windows were painted white, the new windows are also white.
- The window opening operation is by sliding sash to both sashes.
- The windows are fitted with horns.
- The internal sash fasteners and sash lifts are visible as would be on the existing windows.
- There are no uPVC sills to the windows and the frame is slender.

The dwelling is set back from St Leonards Road, accessed off the side road leading to Clunyhill Cemetery. It is also at a higher ground level than the public road. There is a high wall and hedge restricting views to the dwelling. As the windows have traditional proportions, sliding sash operation and are painted white it is near impossible to determine if these are original windows or what the frame material is when viewed from the public road/pavement. The windows do not therefore have a detrimental affect on the character of the dwelling or area. The Reporter for the appeal reference ENA-300-2017 also mentions this with the following statement '*During my site inspection I noted that the new windows were of a very high quality and from even a short distance away are virtually indistinguishable from the originals*'.

This is further supported by a survey of windows on the North side of St Leonards Road included at the end of this statement. The survey shows that the frame material is not the main factor in assessing if a window is detrimental to the character of the area. The opening method and colour have a more obvious impact on the character as they make a window stand out as not in keeping with traditional style.

Looking at the North side of St Leonards Road which is within the conservation area the type of windows are as listed in the survey below. There is a varied mix of window styles from modern uPVC to original timber windows. Very few, if any of the other properties with uPVC windows have the same level of design and detailing as the windows installed to the applicant's property. As a consequence the poorly designed uPVC windows to other properties stand out as modern windows which are not in keeping with the traditional style in the area.

From this survey it is clear that uPVC windows are now well established in the area. This has been acknowledged by the Reporter under appeal ref ENA-300-2017 where he states '*other windows in the area are of a variety of styles, many being obviously UPVC that do not replicate originals. Such windows are now established as part of the appearance of the conservation area*'.

Conclusion

- As there are many other properties with uPVC windows within the conservation area the character of the area includes this window frame. It cannot be argued that uPVC frames are not in keeping with the character of the area.
- Some properties with uPVC windows have planning permission (see below) to install uPVC windows within the conservation area with the reasons that it is not deemed detrimental, it cannot therefore be justified to refuse this planning application on those grounds.
- The survey has shown that correctly proportioned white window frames with sash and case operation are the key design features when looking at a window and deciding if it is of traditional design and in keeping with the character. The applicant's windows have better design than some of the timber windows and most if not all of the uPVC windows on St Leonards Road.

Other Planning Permissions

- Under planning permission ref 17/01078/APP the planning officer comments as follows on the use of uPVC windows '*Replacing 3 timber framed shop windows (fixed) with UPVC will not harm the character or appearance of this building or the surrounding conservation area. In addition the windows to the first floor are a mix of white uPVC and grey metal frame*'.
- Under planning permission ref 13/01413/APP – approval to replace timber windows with uPVC windows the planning officer comments as follows '*given the age of the property, and proposed window design, the applicant's proposals will preserve the areas character*'.

St Leonards Road conservation area property survey

No 65: It is difficult to determine from the public pavement if the windows are timber frame or uPVC due to the house being secluded, at a distance from the road and having white colour. The applicant has confirmed these are original timber windows.

No 63: Windows appear to be either timber or uPVC frames in white. Although there is division of the window with astragals and mullions it is clear that the windows have a modern opening method.

No 61: Windows are clearly uPVC white frames due to the proportions and opening method.

No 59: Windows are clearly uPVC mahogany frames due to the colour, proportions and modern opening method.

No 57: It is difficult to determine frame material from the roadside, it is thought to be timber in white. The first floor windows have a modern opening method and style.

No 55: Windows are clearly uPVC frames from a distance due to their golden oak colour, design, gold bar mullions, proportions and opening operation.

No 53: Windows are clearly uPVC frames from a distance due to their golden oak colour, design, gold bar mullions, proportions and opening operation.

No 51: Difficult to determine the frame type, thought to be timber with a mix of white and brown colour.

No 49: Clearly white uPVC windows due to the proportions and opening method.

No 47: Timber framed, mahogany colour windows.

No 45: It is difficult to tell from the public pavement what the frame is made of as the dwelling is set back from the road and the window frames are white. The proportions and opening method can be established, these are not traditional sash and case.

No 43: : It is difficult to tell from the public pavement what the frame is made of as the dwelling is set back from the road and the windows frames are white. The proportions and opening method can be established and are not traditional sash and case.

No 41: Timber, green, traditional.

No 39: Timber, white, traditional.

No 37: It is difficult to tell what the frame material is from the public pavement due to distance, white painted windows and sash and case operation to some of the windows. Some of the windows are clearly uPVC frames. Some windows look to have planted astragals which would suggest uPVC frames.

No 33: Clearly uPVC white windows due to the design, proportions and opening operation.

No 31: Clearly uPVC white windows due to the design, proportions and opening operation.

No 29: Timber, white, traditional.

No 27: Timber, white, traditional.

No 25: Timber, white, traditional.

No 23: Timber, white, traditional.

No 21: Timber, brown, top hung modern opening.

No 19: Clearly white uPVC frames, due to proportions, modern opening method.

No 17: Clearly uPVC mahogany frames with no window division and modern opening method.

No 15: Clearly uPVC golden oak frames due to proportions and opening method.

No 13: Timber, white, traditional design.

No 11: Timber, white, traditional design

No 7-9: uPVC white windows to ground floor and a mix of white uPVC and grey metal frames to upper floors.

No 1: The first floor windows are white uPVC modern windows. Traditional timber widows to ground floor.

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also at Riverbank, Broadford, Isle of Skye, IV49 9AB T: 01471 822434 F: 01471 822477

REPORT OF HANDLING

Ref No:	20/01059/APP	Officer:	Craig Wilson
Proposal Description/ Address	Retain installed uPVC windows at Craigmhor 67 St Leonards Road Forres Moray		
Date:	11.11.2020	Typist Initials:	LMC

RECOMMENDATION

Approve, without or with condition(s) listed below	N	
Refuse, subject to reason(s) listed below	Y	
Legal Agreement required e.g. S,75	N	
Notification to Scottish Ministers/Historic Scotland	N	
Hearing requirements	Departure	N
	Pre-determination	N

CONSULTATIONS

Consultee	Date Returned	Summary of Response
Contaminated Land	03/09/20	No objection or comment.

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
PP3 Infrastructure and Services		
EP8 Historic Environment		
EP9 Conservation Areas		
DP1 Development Principles		

REPRESENTATIONS

Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		
Summary and Assessment of main issues raised by representations		
Issue:		
Comments (PO):		

OBSERVATIONS – ASSESSMENT OF PROPOSAL

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the adopted Moray Local Development Plan 2020 (MLDP) unless material considerations indicate otherwise. The main planning issues are considered below:

Background

This is a resubmission of a previously refused application to replace windows at Craigmhor, St Leonards Road, Forres, application 18/00223/APP refers. A separate enforcement case was opened, 18/00258/ENF refers and an enforcement notice served on the owners/applicants. No appeal against the planning application was made instead an appeal was made against the enforcement notice. The appeal was subsequently dismissed by the reporter as the grounds for appeal were not competent or justified.

In the reporter's closing remarks he said that it is open to the council to allow a second application for the windows to be submitted, with a subsequent opportunity for review in the event of that also being dismissed.

Impact of the proposed development conservation area residential amenity (DP1, EP8, EP9, &PP3)

This application proposes removal of original timber windows to Craigmhor, St Leonards Road and their replacement with double glazed UPVC window units.

Forres town has an abundance of traditional architecture that combines to provide its distinctive character. In recognition of its historic heritage, the heart of the town and St Leonards Road is designated as a Conservation Area.

Assessment of Replacement Windows

The original timber windows were removed and replaced with UPVC units without the necessary planning permission. No contact had been made with the Development Management section for pre-application advice on replacement windows prior to the work being carried out in a designated Conservation Area. The replacement of UPVC window units which have no value or historic basis in terms of their contribution to the character of Forres conservation area.

The assessment of this application was required to take account of Moray Local Development Plan 2020 Policies EP9: Conservation Areas DP1: Developer Requirements and national guidance published by Historic Environment Scotland, in relation to replacement windows: Managing Change in the Historic Environment - Windows.

The Moray Local Development Plan 2020 and the guidance on replacement windows and doors were approved by Moray Council as the Council's agreed position and approach to protecting our heritage assets. National guidance on replacement windows has been established for over 30 years and Council policy guidance is in accordance with this.

Policy EP9 requires new development within Conservation Areas to preserve and enhance the character and appearance of the subject area, having regard to scale, height, materials, colour, detailed design and use. Policy DP1 requires new developments to be sensitively sited, designed and serviced appropriate to the amenity of the existing property and wider locality.

The Council's policies on replacement windows in conservation areas sets out a presumption in favour of retaining original or historic windows that are repairable and can achieve improvements in thermal efficiency through secondary glazing or draught-stripping. This indicates that replacement will be accepted where the windows are beyond repair or are modern replacements. It recommends that the replacement windows are exact copies, or are near copies where the timber sections can accommodate double-glazing units. The Council's guidance states that there may be opportunities

for installing slim-profile double-glazed units into existing sashes where historic glass no longer survives. It also recommends that the replacements should be made in timber and that applications for UPVC replacements will not be supported on principal or street facing elevations.

It is worth noting that all of the repair options listed above would have been significantly more economical than any replacement windows regardless of whether these were timber or UPVC, and could have enabled the existing timber windows to survive with double glazing inserted into existing timber frames.

In support of the proposed application the applicant has submitted a character appraisal of surrounding properties in the conservation area, making case that there are other properties with similar UPVC windows. The preparation of the replacement windows and doors guidance was intended to provide a pragmatic and consistent approach to dealing with the replacement of historic unauthorised UPVC window units in Conservation Areas. From review, the UPVC windows in highlighted buildings have been installed for more than 4 years and would be immune from any planning control despite the damage caused to the character of the conservation area.

The vast majority of historic properties along St Leonards Road retain timber windows on the front or street elevations. Timber windows and doors play an important role particularly in vernacular architecture where they are the dominant elements. Where building frontages have been modified with modern uPVC framing it is accepted that this plays a part in eroding the appearance and architectural character of the historic streetscape leading to the erosion of historic fabric. However, in this case the essential character of the Conservation Area has been preserved and the predominant window material, contributing to the character of the road, is timber and not UPVC.

The style of UPVC windows installed do not match the existing or originals in terms of appearance with external trickle vent detail visible or material finish and are contrary to the above policy provisions and guidance in relation to replacement windows and doors.

Conclusion

The retention of timber sash and case windows replicating the historic style of windows is an important way of preserving the historic appearance and fabric of the building and the character of the Conservation Area. Modern day standards of insulation can be applied to historic buildings whilst minimising changes to its character and it is therefore important to ensure that alterations to buildings are as historically accurate as possible. Relevant Moray Development Plan Policies, guidance and national policy guidance enable change and do not preclude it. There are opportunities to improve the thermal efficiency of traditional buildings whether through repairs or new windows provided appropriate traditional materials are used. The replacement windows guidance is clear on this subject and states that the use of non-traditional materials such as UPVC on principal elevations will not be acceptable in a Conservation Area.

The proposed uPVC replacement windows would be damaging to the special architectural and historic interest of the building. In addition these would be out of character and damaging to the attractive and well preserved maintained appearance of the conservation area in which Craigmhor is located. The retrospective windows UPVC windows will not preserve or enhance the character or appearance of the Conservation Area.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

None

HISTORY

Reference No.	Description
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18/00223/APP	Replace existing timber windows with UPVC sliding casement windows at Craigmhor 67 St Leonards Road Forres Moray IV36 1DW		
	Decision	Refuse	Date Of Decision

ADVERT		
Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Forres Gazette	Planning application affecting LB/CA	29/09/20
PINS	Planning application affecting LB/CA	29/09/20

DEVELOPER CONTRIBUTIONS (PGU)	
Status	N/A

DOCUMENTS, ASSESSMENTS etc. *		
<i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i>		
Supporting information submitted with application?	YES	
Summary of main issues raised in each statement/assessment/report		
Document Name:	Design Statement	
Main Issues:	Supporting statement providing background to project and examination of proposal in context of conservation area	

S.75 AGREEMENT		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			

REPORT OF HANDLING

Ref No:	17/01078/APP	Officer:	Craig Wilson
Proposal Description/ Address	Replace roof and alterations to shop front at 7 St Leonards Road Forres Moray IV36 1DN		
Date:	23/08/17	Typist Initials:	FJA

RECOMMENDATION

Approve, without or with condition(s) listed below	Y
Refuse, subject to reason(s) listed below	N
Legal Agreement required e.g. S,75	N
Notification to Scottish Ministers/Historic Scotland	N
Hearing requirements	Departure
	Pre-determination

CONSULTATIONS

Consultee	Date Returned	Summary of Response
Building Standards Manager	19/07/17	Building warrant required

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
PP1: Sustainable Economic Growth		
PP3: Placemaking		
EP9: Contaminated Land		
IMP1: Developer Requirements		
BE3: Conservation Areas		

REPRESENTATIONS

Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		
Summary and Assessment of main issues raised by representations		
Issue:		
Comments (PO):		

OBSERVATIONS – ASSESSMENT OF PROPOSAL

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the adopted Moray Local Development Plan 2015 (MLDP) unless material considerations indicate otherwise. The main planning issues are considered below.

Impact of proposed signage on the conservation area (BE3 & IMP1)

In considering applications in a conservation area, the 1997 Act directs planning authorities to ensure that new development will preserve and enhance the character and appearance of an area. The aim is to ensure that new development will enhance an area's quality and therefore experience of visitors and residents alike.

The proposal is to replace leaking roof to existing timber framed conservatory to the rear extension and alterations to shop frontage of 7 St Leonards Road, Forres. The building is constructed of sandstone with a slate roof and a mixture of window types including metal, Upvc and timber.

In order to preserve the character and appearance of the Conservation Area, replacement windows and doors on all elevations of unlisted traditional properties within conservation areas should match the original proportions, appearance, materials, and opening method. Appropriate timber sealed unit double glazing will normally be considered acceptable.

Alternative materials such as UPVC and aluminium, in line with policy BE3, are not normally acceptable and should be justified for use on traditional properties. However, the form of the existing windows & doors within the building and in its immediate surroundings will be taken into consideration.

As detailed above there are a mixture of window types on the principal elevation of this property. Replacing 3 timber framed shop windows (fixed) with UPVC will not harm the character or appearance of this building or the surrounding conservation area.

The alterations to replace the roof affect an extension to the rear of the shop that is of little architectural merit. Removing the substandard sheet plastic roof and replacing with slate will enhance this part of the building and is positive for the conservation area. In any case the alterations would not be readily visible from public vantage points.

On balance the proposed works are small scale and will have a neutral impact on this part of the conservation area. Application is recommended for approval.

REASON(S) FOR DECISION

The Council's reason(s) for making this decision are:-

The proposal was considered to be in accordance with the development plan and there were no material considerations which outweighed the proposal's accordance with the development plan.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

HISTORY

Reference No.	Description	Decision	Date Of Decision
86/00956/FUL	Change of use of shop to office premises at Varis St Leonards Road Forres Moray	Permitted	11/02/87

ADVERT		
Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Forres Gazette	Planning application affecting LB/CA	15/08/17
PINS	Planning application affecting LB/CA	15/08/17

DEVELOPER CONTRIBUTIONS (PGU)	
Status	

DOCUMENTS, ASSESSMENTS etc. *		
* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc		
Supporting information submitted with application?		NO
Summary of main issues raised in each statement/assessment/report		
Document Name:		
Main Issues:		

S.75 AGREEMENT		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			

REPORT OF HANDLING

Ref No:	13/01413/APP	Officer:	Craig Swankie
Proposal Description/ Address	Install replacement windows at Maradale 31 Tolbooth Street Forres Moray		
Date:	4.9.13	Typist Initials:	PAC

RECOMMENDATION

Approve, without or with condition(s) listed below	Y	
Refuse, subject to reason(s) listed below	N	
Legal Agreement required e.g. S,75	N	
Notification to Scottish Ministers/Historic Scotland	N	
Hearing requirements	Departure	N
	Pre-determination	N

CONSULTATIONS

Consultee	Date Returned	Summary of Response

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
BE3: Conservation Areas	N	
H5: House Alterations and Extensions	N	

REPRESENTATIONS

Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		
Name	Address	
Summary and Assessment of main issues raised by representations		
Issue:		
Comments (PO):		

OBSERVATIONS – ASSESSMENT OF PROPOSAL

Proposals

The application proposes the replacement of all doors and windows at 31 Tolbooth Street, Forres. The existing windows and rear door, double glazed with white painted timber frames will be replaced. The existing front door and side screen, currently brown timber double glazed will also be replaced. The proposed windows and doors are all double glazed; Golden Oak PVCU toughened sealed units.

Site Details

31 Tolbooth Street, Forres is located within the Forres Conservation Area. The single storey, detached property has 9 windows to be replaced and two doors, including a side screen at the front door. The property is set back from the road and is not a listed building.

Policy Assessment

Policy H5 requires any alterations to a property to be suitable in terms of style, materials, scale and proportions. The policy aims to safeguard the amenity of the surrounding area. As the windows and doors are all being replaced in the same style, and neighbouring properties share a similar window design the proposals will not adversely affect the areas amenity

Policy BE3 requires any development within a conservation area to preserve or enhance the areas traditional character and appearance. Given the age of the property, and proposed window design, the applicant's proposals will preserve the areas character.

The application is approved

REASON(S) FOR DECISION

The Council's reason(s) for making this decision are:-

The proposal complies with the relevant provisions of the development plan and there are no other material considerations that indicate otherwise.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

HISTORY

Reference No.	Description		
13/01018/ID	Renew (replace) existing windows and doors with new double glazed units at Maradale 31 Tolbooth Street Forres Moray IV36 1PH		
	Decision	Withdrawn	Date Of Decision 14/08/13

ADVERT

Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Forres Gazette	Planning application affecting LB/CA	03/09/13
PINS	Planning application affecting LB/CA	03/09/13

DEVELOPER CONTRIBUTIONS (PGU)	
Status	N/A

DOCUMENTS, ASSESSMENTS etc. * <i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i>	
Supporting information submitted with application?	NO
Summary of main issues raised in each statement/assessment/report	
Document Name:	
Main Issues:	

S.75 AGREEMENT	
Application subject to S.75 Agreement	NO
Summary of terms of agreement:	
Location where terms or summary of terms can be inspected:	

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)		
Section 30	Relating to EIA	NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission	NO
Section 32	Requiring planning authority to consider the imposition of planning conditions	NO
Summary of Direction(s)		

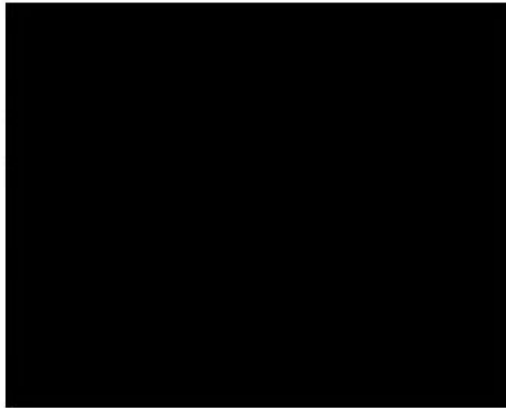


MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
as amended

REFUSAL OF PLANNING PERMISSION

[Forres]
Application for Planning Permission

TO

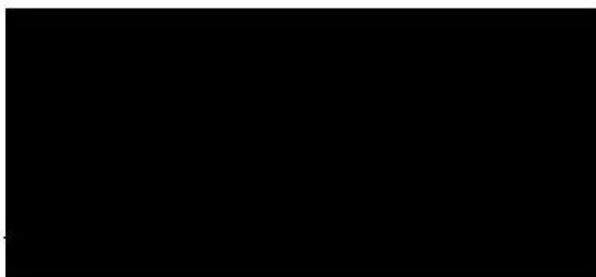


With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

Retain installed uPVC windows at Craigmhor 67 St Leonards Road Forres Moray

and for the reason(s) set out in the attached schedule.

Date of Notice: **12 November 2020**



HEAD OF ECONOMIC GROWTH AND DEVELOPMENT
Economy, Environment and Finance
Moray Council
Council Office
High Street
ELGIN
Moray
IV30 1BX

IMPORTANT
YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW

SCHEDULE OF REASON(S) FOR REFUSAL

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The application fails to comply with the following policies (Moray Local Development Plan Policies EP9 & DP1) and should be refused for the following reasons:

- The proposal is contrary to Policy EP9 Conservation Areas as the removal of original timber windows and replacement with modern UPVC units located on the principal elevations would fail to preserve or enhance the character of the building or conservation area.
- By introducing modern UPVC windows into the conservation area, the proposal is considered to be contrary to Policy DP1 Development Principles as the appearance and material finish of the windows is not appropriate to the established traditional character of the surrounding area.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
20:43:LP		Location plan
20:43:01		Existing and proposed elevations

NOTICE OF APPEAL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from www.eplanning.scotland.gov.uk.

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably

beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Enforcement Notice appeal reference: ENA-300-2017
- Site address: Craigmhor, St Leonard's Road, Forres, IV36 1DW
- Appeal by Mr Scott Waterston against the enforcement Notice dated 18 March 2019 served by Moray Council
- The alleged breach of planning control: The removal of 8 x 2 pane traditional style timber sash and case windows in the principal elevation of Craigmhor, St Leonard's Road, Forres and replacement with 8 UPVC double glazed windows without planning permission
- Date of site visit by Reporter: 26 June 2019

Date of appeal decision: 29 August 2019

Decision

I dismiss the appeal. Subject to any application to the Court of Session, the enforcement Notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Preliminary matter

The two grounds of appeal (d) and (e) relate to the serving of the Notice. In the appellant's submissions reference is made to other matters concerning the design of the windows under appeal, other windows in the locale and the handling of an associated planning application. I am unable to consider these under the two grounds appealed. I submitted a further information request to see if that was the appellant's intention but neither his response nor the council's comment on that added significantly to the original submissions. My determination of the appeal is therefore based on the original submissions.

Reasoning

1. The appeal against the enforcement Notice was made on the following grounds as provided for by section 130(1) of the Town and Country Planning (Scotland) Act 1997:

(d) When the Notice was issued it was already too late to take enforcement action.

(e) The Notice was not properly served on everyone with an interest in the land.



Ground (d): When the Notice was issued it was already too late to take enforcement action

2. Section 124(1) of the Act sets out the time limits for enforcement action. To be immune from enforcement action by virtue of ground (d), it must be demonstrated that the works against which the Notice has been served were substantially complete four years prior to the date of service. In this case the notice was served in March 2019 after the works took place in February 2019. The appeal under ground (d) therefore fails.

Ground (e) The Notice was not properly served on everyone with an interest in the land.

3. Enforcement Notices were issued on 18 March 2019 to Mr Scott Waterston and Mrs Anja Waterston. The council states that before doing so it had conducted a search that confirmed the property was in the ownership of Mr and Mrs Waterston. I have no evidence that there is any other interest in the property or any claim that the Notices were not delivered appropriately. The appeal under ground (e) also fails.

4. As both grounds pled have failed I must dismiss the appeal.

5. The appellant stated in his submission that an associated application for planning permission for the windows was badly handled by the window company and agent and that he was effectively deprived of an opportunity to appeal to the local review body. He is pursuing this through other channels. Whilst lack of knowledge of the law and planning procedures is no defence against carrying out relevant work without planning permission, the fact of his being deprived of the review opportunity, through no fault of his own or the planning authority, may be a potential injustice.

6. During my site inspection I noted that the new windows were of a very high quality and from even a short distance away are virtually indistinguishable from the originals. Photographs enclosed with submissions show this. In addition two new windows, both facing south and not seen from the front of the house, were omitted from the Notice, creating an inconsistent approach. Other windows in the area are of a variety of styles, many being obviously UPVC that do not replicate originals. Such windows are now established as part of the appearance of the conservation area.

7. In the interests of natural justice it is open to the council to allow a second planning application for the windows to be submitted, with a subsequent opportunity for review in the event of that also being dismissed.

8. None of these comments affect my decision on the appeal.

Trevor A Croft

Reporter



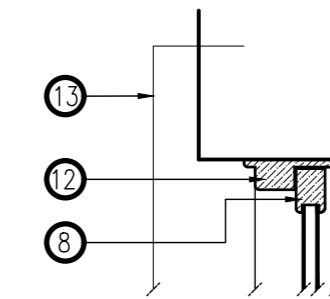
EXISTING SOUTH ELEVATION



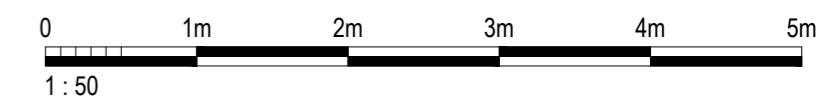
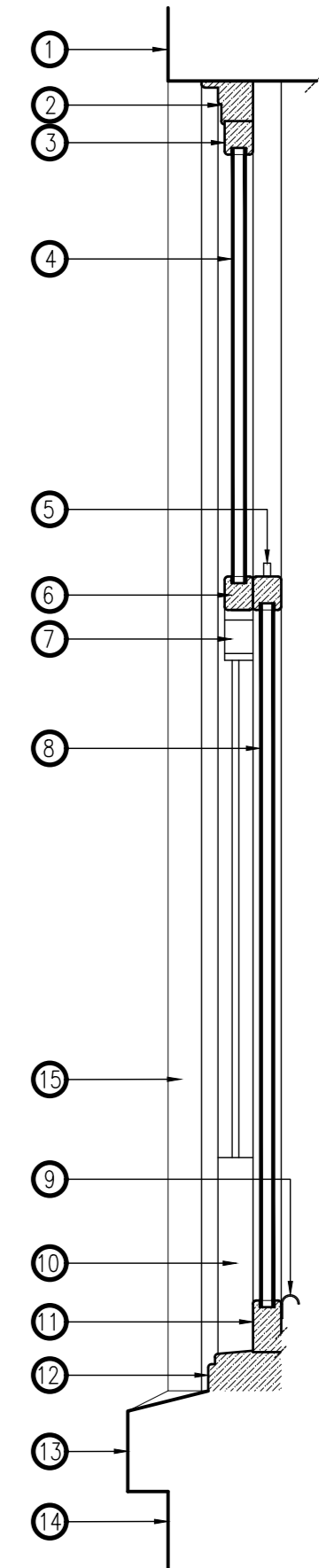
PROPOSED SOUTH ELEVATION

- NOTES:
1. No white uPVC framed windows installed to be retained.
 2. Window proportions match the existing windows. Dimension 'A' on existing windows match dimension 'A' on new windows and same for dimension 'B'.
 3. Window opening operation matches the existing windows with sliding sashes.
 4. Windows have traditional horns.

1. Stone lintel.
2. Top uPVC window frame surround.
3. Top sash window frame.
4. Top sash double glazed unit.
5. Sash fastener.
6. Top sash window frame and bottom sash window frame behind.
7. Horns.
8. Bottom sash double glazed unit.
9. Sash lift
10. Top sash block.
11. Bottom sash window frame.
12. Bottom window frame.
13. Stone sill.
14. Rendered wall.
15. Stove quoin reveal.



Window section & plan
Scale 1:10



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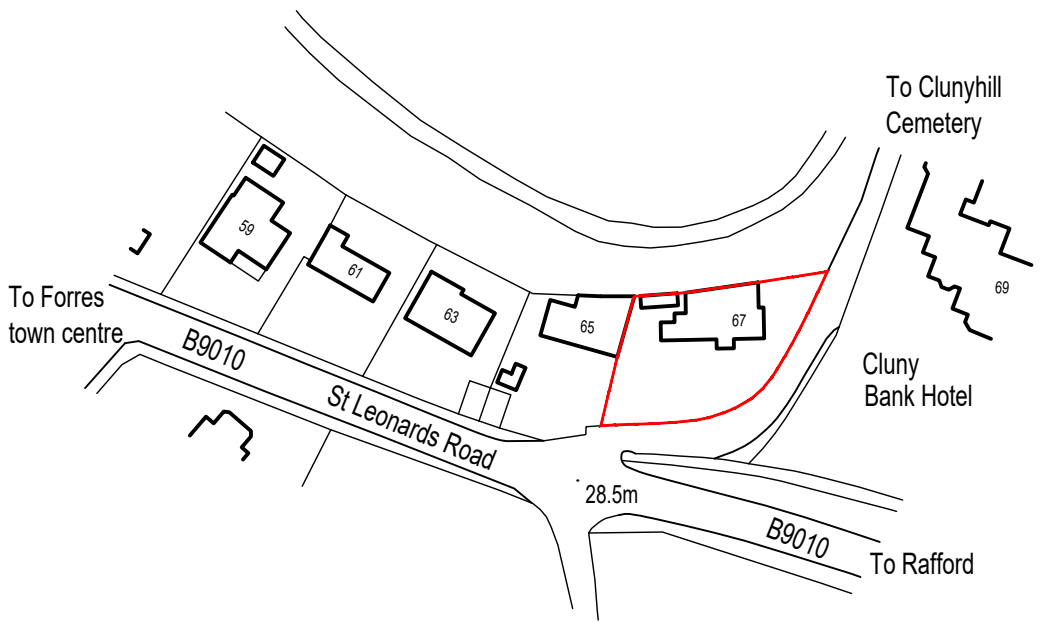
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Application to retain uPVC windows at Craighmor, 67 St Leonards Rd Forres, For Mr S Waterson

PLANNING
Existing and Proposed Elevations



USE GIVEN DIMENSIONS ONLY
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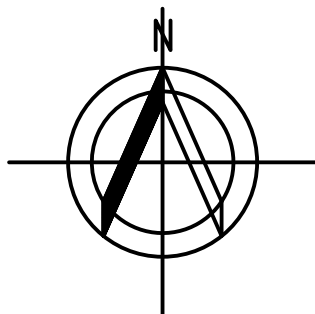
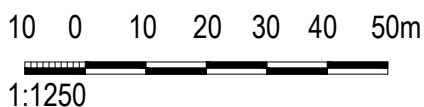


Application to retain uPVC windows
at Craighmor, 67 St Leonards
Road, Forres, For Mr S Waterson

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LOCATION PLAN



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Aug 2020

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