

GROUNDS FOR REVIEW

AGAINST THE REFUSAL OF PLANNING PERMISSION 21/00272/APP

FOR THE

CHANGE OF USE AND ALTERATIONS TO BOATSHED TO PROVIDE A
HUT FOR OCCASIONAL OVERNIGHT STAYS

AT

SITE ADJACENT TO 212A FINDHORN MORAY

MR DONALD CANAVAN FRIAS RIBA MCIARB

4TH JUNE 2021

SUMMARY OF THE GROUNDS FOR REVIEW

- The appellant seeks to improve upon, restore and make good an existing boatshed building that has been on this land and in his family for 60 years.
- The use as a boatshed will continue as the primary use of the building – its where the appellant keeps his boat and has done all his life. The physical changes will improve the appearance of the shed, maintain its character and ensure its survival for the future.
- Allowing the internal area to be improved upon to provide a mezzanine level internally could be done and the mezzanine used for storage of tools, equipment etc. A toilet/ shower will be provided and sink/ power etc all of which it is reasonable to find in a workshop. The applicant is asking that he may use this area occasionally to stay overnight in the boatshed. In hindsight if he hadn't asked would the issue even be raised by Planning?
- The proposal is most definitely not a 'residential or tourism' related proposal. The reasons for refusal refer to residential development incorrectly and the reference to policy DP8 Tourism is irrelevant to this proposal.
- The applicant will not be seeking to make money from the boatshed by renting it out. It is not a tourism facility; it is his for his own boat storage and maintenance.
- The impacts upon an existing neighbour are exaggerated in the report of handling. The Boatshed and the neighbouring house have always co-existed without issue. They were once one planning unit, in the same ownership, but haven't been for decades. There have always been two windows on the back wall of the boatshed facing this house. The house was sold and purchased by the current occupier in the full knowledge of these windows on the boatshed.
- The irony in this scenario is that the primary objector who occupies the upper flat in the house to the rear of the boatshed, lives in a separate part of that house that does not itself benefit from planning permission.
- Every step of the way the appellant has sought to engage positively with the Planning Officer and provide quick responses to questions, extra drawings, a bat survey and information. He has been entirely upfront and honest in his approach to this.
- The LRB must note that there is no objection to the proposal from the occupier of the house the Planner is so concerned about.
- There are also no objections from any of the consultees on the application.
- The crux of the issues comes down to whether the building forms part of the character of the settlement – it must do, it's been there for over half a century. In addition, so many points in the report of handling are agreed that on balance this should be approved.
- The LRB are respectfully requested to approve the planning permission for the works to the building.

1. INTRODUCTION

- 1.1 The Planning Officer, under delegated powers, determined to refuse an application by Mr Canavan at the site adjacent to 212A Findhorn for the change of use of an existing boatshed building and a number of alterations to the boatshed so that Mr Canavan could use it for occasional overnight stays. The LRB are asked to note that property is not permanently changing to a house, it will still essentially be a boatshed. The reasons for refusal on the decision notice are as follows:

"The proposal is contrary to the requirements of policies DP1 (l)(a & e), and DP8 & EP3 of the Moray Local Development Plan 2020 because:

- The site at 84m2 is not of a scale that reflects the existing pattern of residential development in the immediate vicinity and is therefore unsuitable for residential development of any kind;*
- The relationship between the shed and the neighbouring house is such that use of the site even for non-permanent residential use would adversely impact on the amenity of neighbouring properties;*
- There would be an adverse impact on the privacy of neighbouring properties as a result of overlooking from the proposed opening on the western elevation which is in close proximity to the site boundary and*
- The proposal fails to reflect the traditional settlement pattern of the immediate vicinity and therefore would erode the traditional settlement character of the Culbin to Burghead Coast Special Landscape Character."*

2. THE SITE AND THE PROPOSAL

- 2.1 The planning pack submitted with the application and again with this review to the Local Review Body of Moray Council contains all the supporting information required to determine this review. A full list of the documents provided is contained in the appendix to this document.
- 2.2 The site is an existing boatshed that once formed part of a larger site with Broom Cottage. The boatshed building is timber clad with a metal roof and sits to the east of a semi-detached house 212A Findhorn. The shed is at the closest point to this nearest house 1.7m away. Direct access from the road along the site frontage leads to a parking area at the front of the boathouse. The site is semi-screened from view by the existing large mature birch tree on the frontage/ roadside.
- 2.3 The applicant has always kept his boat at the boatshed and spends time in Findhorn, where he grew up, tending his boat, taking it out on the water,

maintaining his connections with the place and occasionally staying overnight in the boatshed.

- 2.4 The proposed alterations to the physical structure of the boatshed will not alter the footprint but marginally increase the volume slightly by providing some storage at mezzanine level over the front part of the building. The main difference will be that the applicant will have facilities such as toilet with shower and a stove/ heating facility that aren't there at present, plus he could potentially sleep there overnight in comfort when he is up there if he chose to. His idea is that the character of the boatshed remains very much as it is now, but with improvements to the building/ structure to allow it to remain for the future. It will remain a fully functioning boat maintenance shed. Furthermore, the removal of the windows on the rear of the boatshed will create a gain in terms of amenity for the occupiers of 212A, the house to the rear of the boatshed. In discussing the proposal the applicant had mooted the notion of the boatshed being like a 'hut' in terms of occasional overnight stays but had no notion of it being open to other people to use. To compare it to holiday accommodation in the report of handling isn't correct.
- 2.5 The design of the boatshed's proposed alterations complement the existing simple character of the building in form, materials and detailing. Alterations have been made to the original proposal by the applicant in order to reduce any perceived impact on the house to the rear. The report of handling agrees that the proposal accords with the requirements in DP1 (i) (a) and EP3.
- 2.6 The nature of the roof and position of rooflights and windows is acknowledged in the report of handling as not resulting in overlooking for neighbours and even results in an improvement in terms of privacy.

3. RELEVANT PLANNING POLICIES

- 3.1 The relevant planning policies are set out in the Moray Development Plan 2020. A number of policies are referred to in the decision notice/reasons for refusal.
- 3.2 Policy DP1 Development Principles states that the policy applies to all development. The reason for refusal states that two criteria of this policy are not met – (a) relating to design and (e) relating to impact on neighbours. The requirement in relation to (a) is that *"The scale, density and character must be appropriate to the surrounding area and create a sense of place (see Policy PP1) and support the principles of a walkable neighbourhood."*
- 3.3 IN regard to 9 e) the policy states that *"Proposals must not adversely impact upon neighbouring properties in terms of privacy, daylight or overbearing loss of amenity."*
- 3.4 Policy DP8 Tourism Facilities and Accommodation is also stated in the decision. This policy states that *"Proposals which contribute to Moray's tourism industry will be supported where they comply with relevant policies. All proposals must*

demonstrate a locational need for a specific site."....." Proposals for hutting will be supported where it is low impact, does not adversely affect trees or woodland interests, or the habitats and species that rely upon them, the design and ancillary development (e.g. car parking and trails) reflects the wooded environment and the proposal complies with other relevant policies. Proposals must comply with 'New Hutting Developments – Good Practice Guidance on the Planning, Development and Management of Huts and Hut Sites' published by Reforesting Scotland."

- 3.5 Policy EP3 relates to Special Landscape Areas and requires that: *"Development proposals within SLA's will only be permitted where they do not prejudice the special qualities of the designated area set out in the Moray Local Landscape Designation Review, adopt the highest standards of design in accordance with Policy DP1 and other relevant policies, minimises adverse impacts on the landscape and visual qualities the area is important for, and are for one of the listed uses. In relation to Landscape Character it also states that "New developments must be designed to reflect the landscape characteristics identified in the Landscape Character Assessment of the area in which they are proposed."*

4. MATERIAL PLANNING CONSIDERATIONS

- 4.1 In support of the Grounds for Review to the Local Review Body we would draw to the LRB's attention the following which has a bearing on the LRB considering the proposal de novo.
- 4.2 The report of handling concludes that the Planning Officer is of the opinion that: *'the site is cramped and not of a sufficient size to reflect the established pattern of residential development in the immediate vicinity.'* However, the LRB are asked to consider that this is an existing building, it has been on this site, in this small curtilage for in excess of 60 years. It is very much part of the established character of this part of Findhorn. To say it is not part of the established pattern of residential character is clearly incorrect. If this were a new building on an open site then perhaps that could be true but the fact remains that the proposal is for physical alterations to an existing boatshed.
- 4.3 The conclusion goes on to say that the relationship of the building with the neighbouring house means that residential use would adversely impact on the neighbouring property and the opening in the western elevation would give rise to loss of privacy and overlooking. However, the proposal is not for residential use – it is for physical alterations to the boatshed. The applicant has stayed in the building overnight now and again, very occasionally as he'll stay with friends in Forres when he visits but he would like the option of being able to stay overnight in his own building now and again.
- 4.4 In the decision notice only 2 documents were referred to namely Location Plan and Elevations Floor and Site Plan revision D. Other relevant documents

containing important information were requested by the Planning Officer and were provided but were not referred to in the decision notice. These included a drawing containing 3D computer-modelled images of the juxtaposition of the various buildings, and sections through the critical relationship between the boatshed and the adjacent dwelling, and a statement illustrating similar developments locally and views from the adjacent main road showing the existing and proposed roof heights in context. The documents submitted also included a detailed statement demonstrating compliance with planning policy prepared by Suzanne McIntosh Planning Limited. These documents together contained important and relevant information pertinent to the decision. The appellant would therefore request that the LRB takes into account all of the relevant information submitted with the application with the request for review.

- 4.5 The decision notice states that the proposal is contrary to the requirements of policies DP1(l)(a&e), DP8 and EP3 however this statement at the start of the schedule of reasons contradicts what is stated in the officer's report of handling. She states that the proposal is acceptable in terms of DP1(a).
- 4.6 In relation to the reason for refusal and bullet point 1 Site Area: The site area is similar to other sites which are approved for residential use locally as referred to in the submission documents. A site area of 84m² does not represent ground for refusal because domestic developments of similar area have been approved locally. (Reference 177 Findhorn developed by LDN Architects in 1986, and North Whins Development by Greenleaf Developments - approved 2019). Other examples are available. However, the fundamental point is that the proposal is not for a residential development it is for alterations to an existing building.
- 4.7 The immediate local area contains a variety of plot sizes and dwelling sizes, developed over many years since the original dwelling, now Broom Cottage was developed as a cholera hospital in 1864. The immediate vicinity includes 1950s council terraces, stand-alone cottages and bungalows from the 1930's to the 2010's. The random and unrestricted texture of development in the area is demonstrated by the Ordnance Survey map of the area. Matching the 'existing pattern of residential development in the immediate vicinity' as interpreted by the officer is neither a requirement, nor necessarily desirable aesthetically.
- 4.8 Notwithstanding this, the Boatshed has existed in its present footprint for 60 years, and no change to that footprint is proposed, thus the proposal does not alter the texture of the local development. **The only change to the existing building is a proposed raising of the roof by 85cm, to provide space for a minimal sleeping platform and the permission for occasional overnight stays in the building.** This does not constitute a residential use and could happen on an ad hoc basis at present at the boatshed without ever bringing it to the Planners.

- 4.9 The proposal includes recladding of the building to improve its appearance, which would be of significant aesthetic benefit to the amenity of the local area and the specific cluster of buildings within which it sits. The 3D images provided and site photographs show the buildings in situ and should be referred to.
- 4.10 With regard to the second bullet point, the relationship between the shed and the dwelling: The relationship between the Boatshed and the neighbouring house is a relationship created by the extension of that neighbouring house in 1986, in closer proximity to the appellant's Boatshed. Nothing the appellant has done has affected that relationship – it was the choice of the neighbouring proprietor to extend their building in close proximity to the Boatshed. It is unreasonable in the appellant's view that he should be restricted by this or prevented from improving his building as a result of this.
- 4.11 Notwithstanding the above, the neighbouring proprietor Mr Van Beuren has confirmed to the applicant verbally and in writing that he did not and does not object to what is proposed in the planning application.
- 4.12 Since the submission of the application it has apparently emerged that the neighbouring property has been further developed and subdivided to create an entirely new dwelling within the roof-space and that this development appears to have occurred without Planning Consent. We understand this is now being investigated by the Enforcement Officer.
- 4.13 The LRB is asked to consider the following, we understand that the occupant of the subdivided dwelling, that importantly does not benefit from planning permission, has objected to some impact on their amenity by the reroofing of the Boatshed. However, not only is this questionable in principle but the actual substance of their objection is factually incorrect because the bedroom windows they complain will be affected in light and view (devoid of planning consent as they are) sit on the opposite (west) side of the roof looking out over Findhorn Bay. Therefore the impacts they allege are impossible to achieve.
- 4.14 This was explained, at length in emails, to the Planning Officer. However, the applicant was told that 'anyone' could complain about a development and even if his bedroom windows had been able to see the garage, (which they cannot being on the opposite side of the building) the fact that these windows should not exist, was not relevant. This appears to be a very odd interpretation of the purpose of neighbour notification.
- 4.15 Regarding the third bullet point in the reason for refusal – the alleged adverse impact on neighbouring properties, the LRB is asked to note that there were no objections from registered proprietors of neighbouring properties. The appellant met with all three immediate conterminous proprietors last summer and advised them of his intentions. Only support and no objections were received. He then sent the original proposal drawing to all three neighbouring proprietors. He received letters of support from Professor Sir James Dunbar

Nasmith in Sandbank to the North side, and from Captain David Scott in Eithin across the road from the development.

- 4.16 A non-permanent, ad hoc, occasional overnight stay in the boatshed is not the same in terms of impacts as a full time, permanent residential use. The ad hoc use as proposed would render the boatshed a mixed use and would clearly not impact upon the amenity of the neighbouring properties. Access and egress to the building are from the front (roadside) elevation of the boatshed via the front yard area which again has no impact on conterminous properties.
- 4.17 The reason stating that *'there would be an adverse impact on the privacy of neighbouring properties as a result of overlooking from the proposed opening on the western elevation'* is not borne out by the facts, evidence and all the information available to the Local Review Body.
- 4.18 There are currently two double windows in the gable of the boatshed which have been there since it was built in 1960. The adjacent dwelling was extended up to the boatshed's gable by the then owner in 1986, and in hindsight the applicant probably should have objected at that time but the approach he took was that if the juxtaposition of the respective windows did not trouble them as the proposer, it should not trouble him either.
- 4.19 Mr Van Beuren, the neighbour in the house to the rear, very recently bought this dwelling presumably in full knowledge of this juxtaposition. When works were proposed to the Boatshed, the applicant even went so far as to propose removing these two gable windows to create greater privacy for the neighbour. This has not been recognised or acknowledged by the Planning Officer. The proposed new window opening is sited specifically and deliberately out beyond the gable wall line of Mr Van Beuren's adjacent dwelling, so that the boatshed will have approximately the same amount of light to allow the applicant to work on his boat in the Boatshed but without any of the alleged overlooking concerns. Again, we reiterate that the adjacent owner who the Planning Officer believes may be potentially affected by this opening has confirmed that he did not object, and does not object to the proposals.
- 4.20 With regard to the fourth bullet point in the reason for refusal *'the property fails to reflect the traditional settlement pattern of the immediate vicinity'* we strongly contest this for two main reasons; the historic development of the area is not regular- it is characterised by sporadic ribbon development beginning with the construction of Broom Cottage as an isolated Cholera Hospital in 1864, followed by gradual ad-hoc infilling of sites along the roadside over the following 160 years. In respect of land use and buildings in the landscape, the immediate area contains stand-alone moderately sized dwellings, close clusters of terraced dwellings, close clusters of dwellings from various periods, and traditional outbuildings.

- 4.21 It is self-evident that the Boatshed has long formed an integral part of this mix, and it is not being changed in plan. Because the Boatshed building footprint has remained unchanged for 60 years it is therefore inarguably a more well-established and more integrated part of the traditional settlement pattern than the more recently extended house adjacent.
- 4.22 There is no proposal to change the established and integrated traditional settlement pattern of which the Boatshed forms part. If it is found that there is anything untraditional about the settlement pattern, which we dispute, this was self-evidently caused by the most recent 1986 extension of the house adjacent, too close to the applicant's traditional boatshed which pre-existed the house by 25 years.
- 4.23 The recladding of the Boatshed building is proposed in very traditional larch cladding boards and the same sinusoidal profiled roofing texture as existing, which will improve its traditional character and contribute positively to the amenity of its environs significantly.
- 4.24 The allegation that such vernacular and character-respectful improvements to a well-established traditional building would '*erode the traditional settlement character of the 'Culbin to Burghead Coast Special Landscape Character'*' we certainly do not agree with, for a number of reasons:
- The building in its present form significantly predated the establishment of the policy and would thus be deemed to be integral to the character which the policy seeks to protect.
 - The proposed alterations do not affect the building plan size or shape, thus the settlement character in planning texture terms is entirely unaffected.
 - The only massing change proposed is a minimal 85cm heightening of the eaves.
 - The treatment of the exterior elevations will make the appearance of the building more, not less, in keeping with the traditional vernacular character of the Moray Coast, and more not less in keeping with similar developments in the Findhorn area all of which have been approved by Moray Council over the past twenty years.
- 4.25 The Boatshed has been in its present site and in its current form for 60 years and it is our view that it does by nature of its pedigree and age reflect the 'traditional settlement character' in terms of siting and design.
- 4.26 The development proposals do not affect the existing siting. In our view they will improve the design of the building and safeguard its condition for many years to come, and by its use of traditional proportioning and high-quality traditional finishes typical of the coastal plain fishing village of Findhorn, the development will reflect the special qualities of the designation.

- 4.27 The content of the relevant Moray Local Development Plan policies is referred to in detail in the preceding section.
- 4.28 Local Plan proposals Map shows the Boatshed site area as within the existing settlement, not in an area of open countryside. The settlement pattern identified in the plan proposals map does not show anything anomalous about the development location or the footprints of the existing buildings. In fact, the policy plan does not show the correct building footprint, however no change to the actual footprint of any buildings is proposed. The only change in form proposed is to raise the roof of the existing boatshed by a minimal 85cm.

5. CONCLUSION

- 5.1 For the above reasons the LRB is asked to approve the physical alterations to the building as set out in this request for review.
- 5.2 The description of the proposal also states a 'change of use' although the proposal will largely retain the boatshed use and amend it to allow infrequent overnight stays. Whether that constitutes a change of use is a matter of fact and degree, and there is a strong argument that until overnight stays were regular then they could happen as a de-minimis element of the boatshed use at present and after the alterations being undertaken.
- 5.3 The LRB can therefore approve the physical alterations in the safe knowledge that these are acceptable in terms of the policies and can, if necessary, state that the formal 'change of use' that the Planners included in the description is not approved if that assists the LRB in arriving at their decision.
- 5.4 Lastly, the owner Donald Canavan was brought up in the adjacent property Broom Cottage since birth in 1962. He inherited the property and the boatshed upon the death of his parents and restored both in 1990, where he lived for 8 years, raising a family. Sadly, his wife's illness forced him to sell Broom Cottage to move to Edinburgh where she could be treated, however he retained the boatshed to keep his boat in, and to maintain his lifelong link with the place.
- 5.5 Fundamentally the application is not commercial in nature nor impacting upon planning policy. It was devised for minimal impact and submitted in the hope of avoiding the risk of losing this lifelong connection with Findhorn, a connection which is very important to Mr Canavan.