

Appeal Decision Notice

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Decision by Philip G Hutchinson, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/300/318
- Site address: Rathven Station, Rathven, Buckie, AB54 4DW
- Appeal by Mr A Morrison against the decision by the Moray Council
- Planning application 08/01235/FUL dated 2 June 2008, refused by notice dated 12 September 2008
- The development proposed: Erect two dwelling houses and garages
- Application drawings: 05-52A D1, 05-52 D2, D3 and D4
- Date of site visit by Reporter: 11 February 2009

Date of appeal decision: 18 February 2009

Decision

I allow the appeal and grant planning permission subject to the 4 conditions listed at the end of this notice on pages 3 and 4.

Reasoning

1. The key issues are (1) whether the proposal is consistent with the development plan and (2) if not whether other material considerations justify a development plan departure. The most relevant parts of the development plan - as it stands today - are policies 1(e) and 2(e) in the Moray Structure Plan 2007 and H8, E10, T2 and IMP1 in the Moray Local Plan 2008.

Note: The refusal notice also relies on 5 policies from the Moray Local Plan 2000, but its replacement was adopted in December and all parties have had the opportunity to focus on the provisions of the new local plan before the exchange of written submissions was concluded. This determination focuses on the development plan as it is constituted on the date of this Notice.

2. The first of the above structure plan policies encourages low-impact well-designed development in the countryside to support local communities and rural businesses. The second one protects the countryside around towns including Buckie from development. Local plan policy H8 guards against proposals for more than two houses at a time but accepts small scale residential development in the countryside subject to various siting and design criteria. Policy E10 presumes against development in this area of designated Countryside Around Towns [CAT] unless it falls into an exceptionally allowable category. Local plan policy T2 presumes against development which would have a substandard means of access, which involves inadequately mitigated traffic impacts and where the access itself would have an unacceptable visual impact. Finally, local plan policy IMP1



requires new development to be sensitively sited, designed and serviced having regard to 14 detailed criteria. The other material considerations are (i) whether any feature of the site and its surrounding justifies flexibility (ii) whether approval would set an unacceptable precedent and (iii) whether planning conditions can resolve any difficulties which arise from any of the above matters. These all overlap and can be considered simultaneously.

3. Taken together the above development plan policies presume against new development within this designated CAT near Buckie. However this is a brownfield site. It conforms to the definition of brownfield land which is found in the glossary of Scottish Planning Policy 3 – *Planning for Homes*. None of the above development plan policies appear to provide for the re-use of brownfield land within this area of CAT. This situation strikes me as harsh.

4. A well-defined group of 6 houses occupies most of the remainder of the former station area, one of them quite modern. The combined visual impact on this slight crest in the landscape is nevertheless moderated by roadside vegetation and by naturally regenerating trees within and around the site. The design of the houses escapes criticism and there is sufficient land within the appellant's control for additional landscaping and modest access improvements. In these circumstances I consider that the effect on the character of this designated area of CAT should be negligible at the end of the day. The well-defined 'one-off' nature of this long-established brownfield site adjacent to a well-defined housing group should provide the council with sufficient reassurance in regard to precedent issues.

5. The A98 at this point carries no special speed limit but visibility is good in each direction (from two separate accesses serving the combined group). Roads officials addressed their criticism to a proposal for 4 houses not 2 (i.e. by reference to a different previous proposal) - which reduces the weight I can attach to this criticism. Allowing the appeal affords an opportunity to secure a service lay-by on the site frontage. This can function also as a passing place – a fringe benefit for exiting users of the east access. The angled geometry of the accesses should ensure that each serves a separate function depending on the direction of travel. The official accident record which has been submitted does not as far as I can tell include events at either of the accesses to Rathven Station. Even the separate anecdotal evidence is sketchy. A 33% increase in traffic generation is in prospect (less if allowance is made for agricultural access and the occasional access by a bus on which a neighbour has commented). Even so this increase is likely to be split between two access points. I recognise that the substandard nature of the access arrangements is a particular disadvantage but in the circumstances I find that this does not justify refusal.

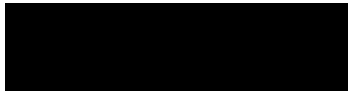
6. The planning conditions below aim to make the development as low-impact as possible, and in tune with structure plan policy 1(e). The site-specific situation justifies making an exception to structure plan policy 2(e) and local plan policy E10. With only two houses at stake there is no conflict with local plan policy H8, and condition 2(c) below reduces the scope for later incremental development.

7. The IMP1 criteria are not presented as a prescriptive list. The language means that this policy can be satisfied on overall balance (i.e. as a basket of tests). I consider that most are satisfied given the scale of the development, the scope for integrating it into the surroundings, plus the proximity to services and lack of decisive infrastructural objections. Condition 2(f) below is a sufficient response to the perceived land contamination issue in tune with paragraph 33 in Planning Advice Note 33 – *Development of Contaminated Land*.



The appellant is reconciled to resolving this matter in this way. Any remediation must obviously precede development but I am not convinced that a professional ground contamination assessment is a pre-requisite of planning permission in this case given the potential for abortive 'front end' expenditure and the proximity of 6 houses on former railway property. Condition 2(f) in any case corresponds to that which the council has suggested as part of its 'fall back' position in this appeal - as do the other conditions subject to rewording and some tightening up in regard to timescales. The question of access to neighbours' soakaway systems - which allegedly extend onto the appeal site - is a private matter for the appellant and should not inhibit the development itself except conceivably under the building control regime. The development would sterilise no natural resources. I find it difficult to visualise a satisfactory alternative future for the site, despite undeniable tension with local plan policy T2.

8. Drawing together all the above matters I conclude that the degree of conflict with the above parts of the development plan is not very serious and that material considerations (site-specific factors plus the strict conditions below) justify a development plan departure where conflict arises. Careful account has been taken of all the other matters which have been raised but they do not outweigh those considerations on which this decision is based.



PHILIP G HUTCHINSON
Reporter

Conditions:

1. The development shall commence within 5 years hereof.

REASON: In accordance with Section 58(1)(a) of the Act.

2. Before any work commences the following details and particulars shall be submitted for the prior written approval of the planning authority:

(a) A revised plan of the site accesses to include a 3m x 10m service lay-by (plus tapers) on the site frontage to be shared between the two houses and to enable service vehicles to park clear of the track and allow others to pass; the plan shall also show any front boundary marker set clear of this lay-by and the track behind a 1m grass verge. The said lay-by shall be available for use before any construction activity commences and before any building materials or items of equipment are delivered to the site;

(b) A professionally prepared landscaping scheme indicating all trees and shrubs to be retained, measures for their protection during development, and additional tree planting (concentrating on the perimeter which shall in any case also feature native hedges) specifying species, numbers and heights at planting time together with aftercare measures for the first 5 years after completion of this scheme;



(c) Proposals for the inclusion of land between the appeal site and the house known as Shalom within the curtilage of either of the new houses or this existing house, suitably landscaped in a manner consistent with the scheme at 2(b) above;

(d) Samples of all facing and roofing materials including surfacing materials for parking areas, driveways and the above lay-by;

(e) Proposals for the hard-surfacing of each access point for a distance of at least 5m back from the edge of the public carriageway designed to ensure that no water or debris is carried onto the public road. The approved details shall be complete before any construction activity commences and before any building materials or items of equipment are delivered to the site.

(f) A professionally prepared Method Statement setting out a scheme of (i) investigation into potential ground contamination and its potential impacts, (ii) proposals for appropriate remediation in advance of development and (iii) contingency measures for dealing with any unexpected contamination during development. All work at (i) and (ii) as may be approved in writing by the planning authority shall be completed to its satisfaction before any other work commences and before any building materials or items of equipment are delivered to the site.

REASON: These important visual and functional matters demand early and detailed attention and cannot be left any more open ended, and in the case of (c) to also help guard against further incremental development.

3. Before either house is occupied all work at 2(a), (c), (e) and (f) above shall be completed and all parking areas, access ways and turning space shall be available for use.

4. Within 6 months of the first house receiving its completion certificate all landscaping work approved in discharge of condition 2(b) and (c) above shall be complete and any tree or shrub failures (for whatever reason) within the first 5 years shall be promptly replaced on a like-for-like basis unless alternative arrangements are first approved in writing by the planning authority.

REASON (3 & 4): These important matters concerning access and the integration of the development into its setting cannot be left any more open ended.