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## Grounds of Appeal

Site at Coneloch, Birnie, Moray

**Issue Date:**

15<sup>th</sup> November 2021

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## 1.0 Introduction

The following Statement is submitted under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) and constitutes Grounds of Appeal against a decision to refuse planning permission for the erection of a dwellinghouse and garage at Coneloch, Birnie.

The notice of review has been lodged within the prescribed three month period from the refusal of permission dated the 8<sup>th</sup> of October 2021.

## 2.0 The Proposal

Planning permission is sought for a single dwellinghouse served by a private water supply and private drainage (septic tank/soakaway and SUDS to soakaway). The site is served by an existing access track which extends from Mannocho Road a short distance to the west.

The proposed 4 bedroom dwelling is of 1½ storey construction (7.5 to the ridge) construction, with a rectangular shaped plan form, 45 degree pitched roof and traditional gables. External finishes include natural slate to the roof and a combination of white K rend and anthracite cedar cladding to the walls. The submitted plans are in Appendix 1 (page 3 of accompanying document).

## 3.0 Reason for Refusal

*“The proposed house fails to comply with policy DP4 – Rural Housing of the Moray Local Development Plan 2020 because its height at 7.5 metres exceeds the maximum height specified in policy DP4’s design criteria, requiring rural houses to be no more than 6.75 metres in height.”*

Having reviewed the reason for refusal (Decision Notice in Appendix 2, page 10), the Appellants strongly contend the proposals constitute an acceptable departure from policy on account of the planning history which exists on the subject site.

## 4.0 The Principle of Development

This application was refused solely on the height of the proposed dwellinghouse- the principle of residential development on the appeal site is not in dispute. In this respect, as detailed in the description of planning history provided in the delegated report (appendix 3, page 14), the appointed officer confirms the site has a history of single house permissions dating back to 2009 and in the description of development (appendix 3, page 13), confirms that the planning permission has been implemented lawfully.

For the avoidance of doubt, we have also appended a letter from Moray Council which confirms that planning permission granted under reference 15/01751/APP has been implemented lawfully and therefore exists in perpetuity (appendix 4, page 16). The suite of approved plans has also been appended to these Grounds of Appeal (appendix 4).

In terms of technical and/ or environmental considerations, page 1 of the appointed officer’s report (appendix 3, page 12) confirms there has been no material change in circumstance at the proposed site. This is evidenced in consultation responses from Moray Flood Risk Management, Environmental Health, Contaminated Land, Private Water Supplies and the Transportation Manager

in which no objections are raised. In addition, there are no objections from members of the public or any other third party.

## 5.0 Main Issues

Given that the principle of a single house development on this site is not in dispute and there are no technical or third party objections to the proposals, the key issue in assessing the merits or otherwise of this appeal can be summarised as follows:

- Does the material weight given to an extant planning permission in the decision making process, which has commenced lawfully, diminish over time?

The appeal site has the benefit of an extant planning permission for a house which is 11.6 metres high. These Grounds of Appeal are submitted in support of a proposal which seeks planning permission to erect a house with a maximum ridge height of 7.5 metres in height. 6.75m is the maximum building height prescribed in policy DP4 Rural Housing.

As Member's will be aware, Sections 25(1)a and 37(2) of the Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are "material considerations" to justify doing otherwise. In this context, the appellants recognise the proposed dwelling is 75cm higher than what is prescribed in the relevant policy test, however would strongly contend that the existence of planning permission in perpetuity on the appeal site to be a significant material consideration in the determination of this case, such that would warrant a positive recommendation.

Members are asked to draw their attention to a recent approval under reference 21/00101/APP (approved 16/03/2021) for a house 7.1 metres in height. The appointed Officer gave the following justification in reaching this decision (appendix 5, page 26):-

***"In respect of policy DP4 - Rural Housing, the design of the proposed house complies with the design criteria outlined in the policy apart from the proposed houses exceeds the maximum height requirement of 6.75 metres. The proposed house is the same height as that of the most recent planning consent on the site (7.1 metres). Given the minimal additional height over the maximum specified in DP4 (350 mm difference), the similarity of height to that recently consented (within the past 10 months), as well as the suitability of the design in all other respects of policy DP4, the proposal is considered to be an acceptable departure from the development plan (namely policy DP4 - Rural Housing) in this instance."***

In coming to the opposite view in respect of the proposals at hand, the appointed officer states the following (appendix 3, page 13):-

***"The proposed house is of an appropriate scale for the site and formed of simple, well-proportioned elements. Whilst there are glazed gable features these are not excessive. There are no more than two primary wall finishes, with the natural slate roof a suitable finish. The roof pitch and gable widths are within the specified limits and window openings have a vertical emphasis. However, the height of the house at 7.5 metres exceeds the maximum limit of 6.75 metres as specified in policy DP4."***

***The sections submitted showing the consented house compared to that proposed are noted. All new rural housing is required to meet this criteria. Consent for the house permitted on site has been in place since 2012. Given the length of time that has passed since the original consent this is considered to have limited weight and does not justify a departure from policy DP4. Accordingly the proposal fails to comply with policy DP4 on the basis the height of the house exceeds the maximum specified in the design criteria."***

These two cases are almost identical- both sites have the benefit of planning permission in perpetuity and the key determining factor is the height of the buildings. The only difference is the time that has elapsed since the permissions were granted.

In coming to a recommendation of refusal, the appellants could understand the appointed Officer's position if the permission had expired (or could expire) but in a situation where development has commenced lawfully, and the originally approved arrangements could be built out without any further permission, it is apparent that this permission carries the same material weight in the decision making process as any other permission of the same status, approved recently or otherwise.

When all matters are considered in the round, the proposed reduction of 4.1 metres in building height, the accordance of the updated proposals to all other aspects of policy DP4 in respect of siting and design and the substantial backdrop of mature planting which exist on the subject site weigh heavily in favour of approving the proposals.



**Illustration demonstrating the reduction in height to that originally approved**

## 5.0 Conclusion

The physical land use principle of housing on the appeal site is firmly established. There are no technical or environmental objections to the proposal and no adverse comments were made by the general public.

The time that has elapsed between the original grant of planning permission is irrelevant because the approved arrangements can be built out without any further permission from the Planning Authority. In this context, it is as relevant now as it was the day the permission was implemented.

We would submit that the existence of planning permission in perpetuity for a dwellinghouse that is a full 4.1m higher than the dwelling proposed in these Grounds of Appeal (4.85m higher than what is prescribed in policy) carries substantial weight in the decision making process. Although the proposals under consideration are 75cm higher than the relevant policy test, the updated proposals clearly align more closely with the Council's overall aim to reduce domestic building height in rural areas.

Further, we would point to the Officer's assessment which confirms the proposals are in full accordance with all the other requirements set out in Policy DP4 in respect of siting and design and in particular that the house is considered to be of an appropriate scale for the site.

On the whole, the appellants contend that insufficient weight was given to the site's history of planning permission in the decision making process and Members are respectfully requested to adopt a more pragmatic view and reconsider the decision to refuse the proposed development in this context.