

Appellant's Supporting Statement to Moray Council Local Review Body

Appeal of decision for refusal 22/01423/APP by The Cuthill Family

Background

A Notice of Request for Review under Section 43(a)8 of the Town and Country Planning (Scotland) Act 1997 (as amended) and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 has been submitted to Moray Council on 9th March 2023. This Supporting Statement has been prepared to aid Members' consideration of the review.

Planning application 22/01423/APP was submitted on 3rd October 2022 and a decision of refusal made under delegated powers was issued on 13th December 2022.

The proposal is for "change of use from amenity to garden ground and erect a 1.8m high timber fence" to the rear of existing residential property at 10 Linksfield Road, Mosstodloch.

The single reason for refusal provided within the case officer's report of handling is a departure to Local Development Plan (MLDP2020) Policy 'EP5 Open Space'.



The Site

The Site is located to the rear, north, of the existing garden ground at 10 Linksfield Road. The land here is designated ENV6 Natural/Semi-Natural Greenspace, under the Mosstodloch Settlement Statement.

Notwithstanding this designation in the MLDP2020, in reality the land is, at best, amenity space used primarily by dogwalkers to access the woods near the properties at Linksfield Road.

Presently, and as evidenced by the photographs enclosed with this submission, the area is dominated by gorse bushes, over 10 feet tall in some places. The vegetation is not regularly maintained and homeowners will typically clear areas to the rear of their own property.

This area was once owned by a developer, Strathdee Properties, with the intention of delivering housing development. Over the past 20+ years there has been no meaningful intervention with the land, resulting in its current state. It is open space in the sense that there is no development upon it, therefore its value may be overstated with its designated status as such in MLDP2020.

The land which is subject of the planning application is presently under ownership of Crown Estate, who have agreed to sell the land to allow for the change of use and ensure it is utilised by residents and maintained to its full potential.

A site visit along the path to the rear of the application site demonstrates that this proposal for change of use is not uncharacteristic of similar activity by a number of neighbouring properties in the area. An invitation is extended to Members of the Local Review Body to undertake a site visit to demonstrate the merits of the appeal. Photographs are enclosed, overleaf, to illustrate points of relevance. Further photographs can be supplied on request.



*Top: View of path, rear of Linksfield Rd, showing existing extended properties.
Below Left: An example of where one homeowner has cleared vegetation at their property.
Below Right: View showing rear of the application site with overgrown vegetation with neighbour's fence of extended garden (approval 10/01928/APP).*



Policy Context

The officer's report cites the only reason for refusal being that, citing Policy EP5 Open Space, *development which would result in a change of use of a site identified under the ENV designation in settlement statements to anything other than open space will be refused.*

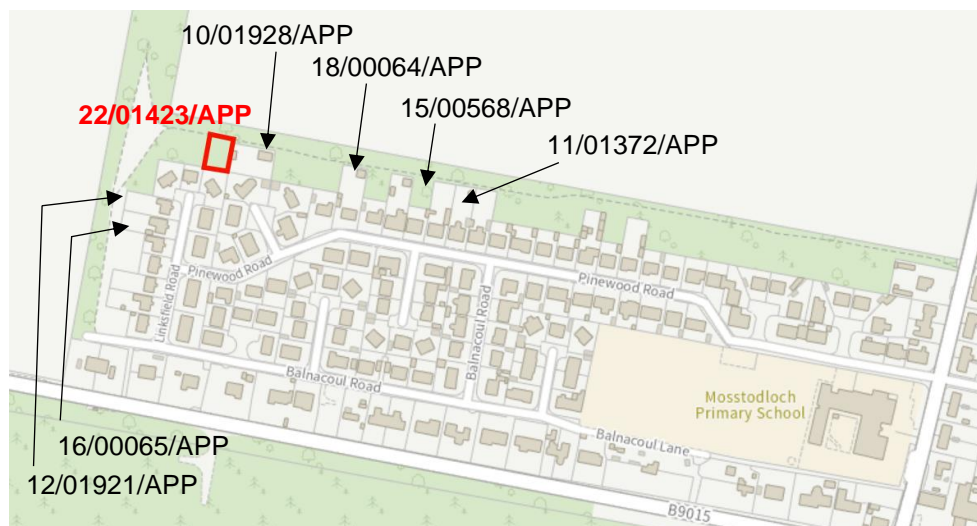
There is no 'development' proposed in this case, however it is considered that the proposed change of use to garden ground is unacceptable.

There is acknowledgement in the case officer's report that *neighbouring properties previously eroded this ENV6 designation with similar developments under previous Local Development Plans but the designation has since been reinforced by the Mosstodloch Settlement Statement, which has mapped around these previous infringements into the ENV area.*

It appears that Moray Council have introduced this land designation in the adopted MLDP2020 in response to a number of similar 'changes of use' that have occurred here over the years. The strip of amenity land to the rear of properties along Pinewood Road/ Linksfield Road has been demonstrably altered.

Planning History

The case officer's report of handling references "*neighbouring properties previously eroded this ENV6 designation with similar developments*". At least six other cases in the immediate area have been found.



The majority, if not all, of these examples sought planning consent retrospectively. The current application may be the only application which sought consent from the planning authority prior to undertaking works.

Despite the retrospective nature of these examples, the planning authority has supported the change of use to garden ground a number of times. The latest example being in March 2018 and described as 'totally compliant' with the adopted Local Development Plan of the time. The only circumstance that has changed is the policy nuance of the current adopted Plan.

Whilst this Appeal to the Local Review Body cannot attempt to amend the Council's adopted position in MLDP2020, it is suggested that a review into the extents of this designation is carried out as part of the next Plan to take into account the reality of what is on the ground.

Material Consideration

The case officer's report of handling states that "*the MLDP2020 takes primacy over any older policy document and Policy EP5 must be followed in this decision*". This may be the case, however Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that:

*"Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination is, **unless material considerations indicate otherwise**, to be made in accordance with that plan"*.

In this case the previous planning decisions made by Moray Council are important material considerations, and it is respectfully requested that Members of the Local Review Body determine that the proposal represents an acceptable departure to the MLDP2020.

Particular reference is made to the reporting of the Moray Local Review Body consideration of 10/01928/APP at 72 Pinewood Road (Appendix 1). The circumstances are comparable. Members at that time determined that the change of use would not be detrimental to the area but would in fact enhance it. It was also noted by one Member that the land to the south of the path is described as "scrub land" (implying low value). Members agreed that the views expressed were a material consideration of such weight to justify departing from policy and agreed that the request for review be upheld and consent granted as an acceptable departure, subject to standard conditions.

Summary

- The proposal which is subject of this appeal is a change of use from amenity ground to garden ground.
- The appellant understands deeply the importance of protecting areas of open space and respects the purpose of planning policies in doing so, as someone who has dedicated their own career to environmental protection.
- However, there is a detailed planning history and very clear precedent set by Moray Council in awarding this change of use to other properties (usually retrospectively) in the immediate area of Linksfield Road and Pinewood Road. MLDP2020 has applied a designation upon the land which is unduly restrictive upon the specific area at the rear of these properties.
- The change of use, if allowed, will result in no impact upon the accessibility of the public footpath, the overall amenity of the area will be maintained, and in becoming garden ground, will still retain a level of 'open space'.
- An inspection of the site and surrounding area is welcomed to assist the Local Review Body in its careful consideration of this appeal. It is respectfully requested that the appeal be upheld by Members citing that material considerations outweigh the development plan.