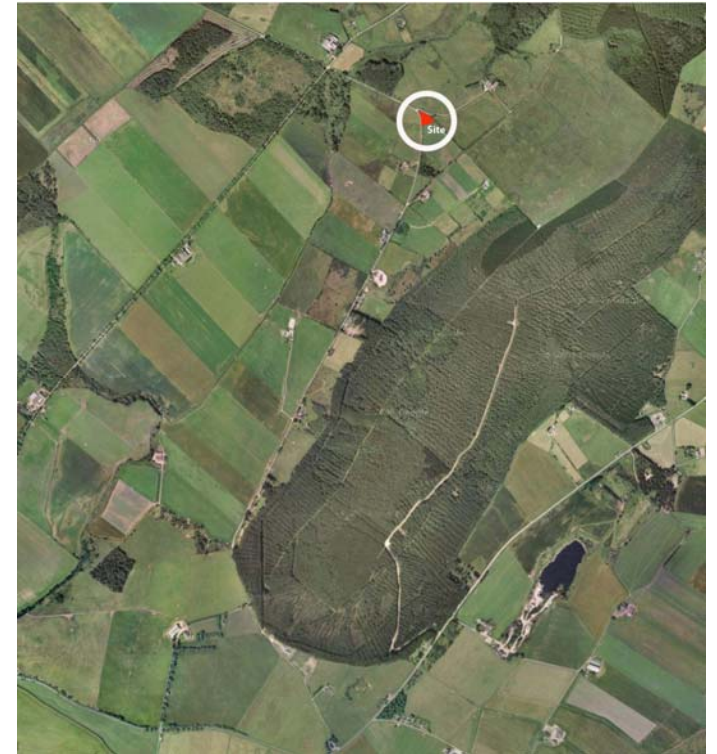


Site at Roadside Croft, Grange - Mr and Mrs J Sim

December 2009

Grounds for Review of Refusal of Planning Permission in Principle

Planning Application Ref No 09/01611/PPP



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Contents

1.0 – Introduction

2.0 - Background to Application

3.0 – The Proposal

4.0 – The Site

5.0 – Development Plan Policy

6.0 – Structure Plan Policy

7.0 – Local Plan Policy

8.0 – National Planning Policy and Guidance

9.0 – Main Issues

10.0 - Reasons for Refusal

11.0 - Conclusion

Photographs of site and surroundings

Appendices - Separate Document

Appendix 1 - Case officers Report of Handling for planning application

Appendix 2 - Circular 4/2009 - Development Management Procedures - Extracts

Appendix 3 - Moray Structure Plan 2007 - Extracts

Appendix 4 - Moray Local Plan 2008 - Extracts

Appendix 5 - Scottish Planning Policy (SPP1 Replacement) - Extracts

Appendix 6 - Scottish Planning Policy 15 (SPP 15) - Planning for Rural Development - Extracts

Appendix 7 - Planning Advice Note 72 (PAN 72) - Housing in the Countryside - Extracts

1.0 Introduction

1.1 These grounds for review of a decision to refuse planning permission in principle for a house at Roadside Croft, Grange are being submitted under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended). This notice of review has been lodged within the prescribed three month period from the refusal of permission dated 27th October 2009.

1.2 The grounds for review respond to the reasons for the refusal of planning permission and address the proposal in relation to Development Plan Policies and relevant material planning considerations as required by Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended).

2.0 Background to Handling of Application

2.1 The application was dated 21st August 2009 and was refused under the Councils Delegation scheme by the case officer on 27th October 2009.

2.2 The reasons for refusal state that;

The proposal is contrary to policy 1(e) of the Moray Structure Plan 2007 and policies H8 IMP1 of the adopted Moray Local Plan 2008 for the following reasons

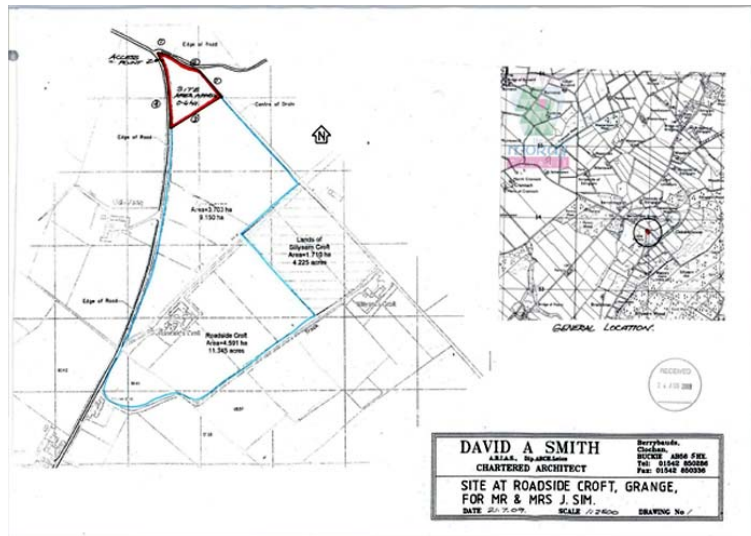
1. *The proposal would occupy a roadside position within an open setting and would be readily visible from a large part of the surrounding countryside and adjoining public roads. The resultant development would represent inappropriate 'overtly prominent' development in the countryside, which would neither be low-impact or well located, and would detract from the rural character of this part of the countryside. Approval would set a serious and undesirable precedent for similar poorly sited proposals to be submitted in the area. It is acknowledged that there is an area of woodland to the north but it is not fully established to provide a backdrop to offset such a prominent site.*

2. *No material considerations exist to warrant a departure from policy and in light of the above the application is recommended for refusal.*

2.3 The report of handling for the planning application was dated 27th October 2009 (Appendix 1). Under the heading "Development Plan Policy" it shows that the planning application was considered to be a departure from Local Plan policies H8 and IMP1 but

not Structure Plan policy 1(e) which is cited in the reasons for refusal. From the way the "Development Plan Policy" section of the report of handling is set out it is reasonable to assume that the proposal complied with all of Structure Plan policies 1 and 2.

- 2.4 The report confirms that despite the planning application being advertised in the local press there were no objections from third parties. It also confirms that there were no objections from statutory consultees which included the Councils Environmental Health Manager, Contaminated Land Team, Transportation Manager, Environmental Protection Manager and Scottish Water.

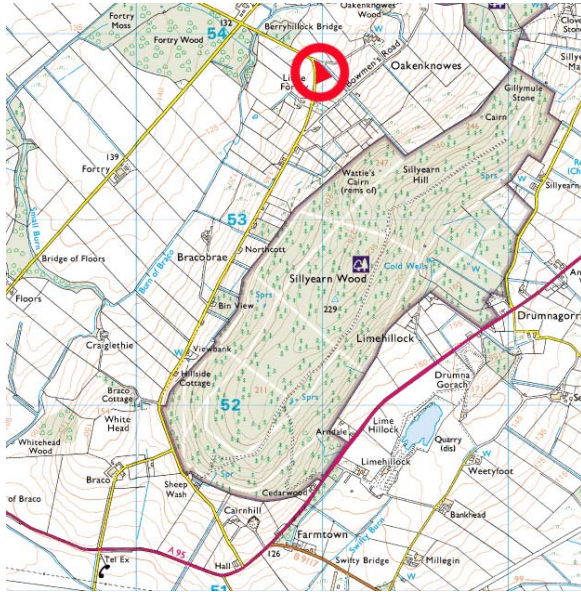


Copy of plan submitted with application - NTS

3.0 The Proposal

3.1 The proposal sought planning permission in principle for a single dwelling served by a public water supply and private drainage (septic tank/soakaway and SUDS). Access will be from a public road running along the West boundary of the site.

3.2 The location for the proposed house has been specifically chosen to reflect the dispersed settlement pattern of the area and provide a house on a site with a good backdrop to ensure that the house integrates with the wider landscape and surrounding area.



Location of site

4.0 The Site

4.1 The site is located at the North end of Bracobrae which is approximately 4.5 miles East of Keith. Bracobrae sits below Sillyearn Wood which rises to over 100 metres above the site to the East.

4.2 A striking feature of Bracobrae is that new housing has been approved by the Council along the public road throughout Bracobrae leading to the site from the A95 to the South. All of this development is at a higher level than the site and examples are shown in the photographs attached to this statement.

4.3 The site itself sits below Sillyearn Wood to the East and extends to approximately 0.4ha of rough grazing land. It is roughly triangular and is defined by a public road along its West boundary with a long established track along its North boundary. The Southern boundary is undefined.

4.4 There are two main approaches to the site along public roads, from the South and West. When approached along these roads the site is contained and absorbed within the landscape by strong backdrops of rising land to the North and West (refer to photographs attached to this statement).

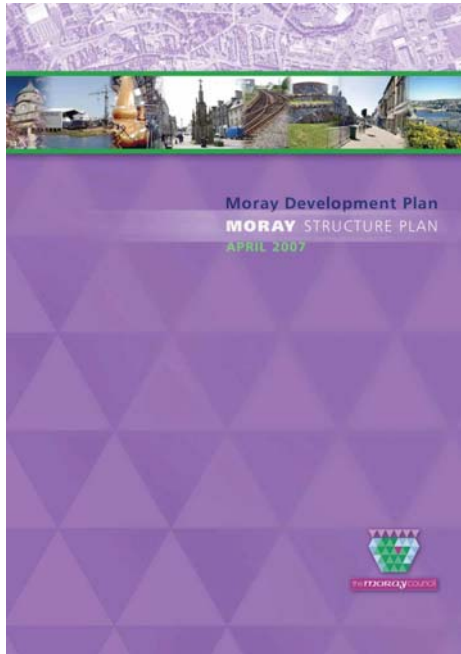
5.0 Development Plan Policy

5.1 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise.

5.2 The Development Plan for Moray comprises the Moray Structure Plan 2007 approved in April 2007 and the Moray Local Plan adopted in December 2008.

5.3 Material considerations are not defined statutorily. Examples of possible material considerations are set out in an Annex to Scottish Government Circular 4/2009 (Appendix 2) and they include;

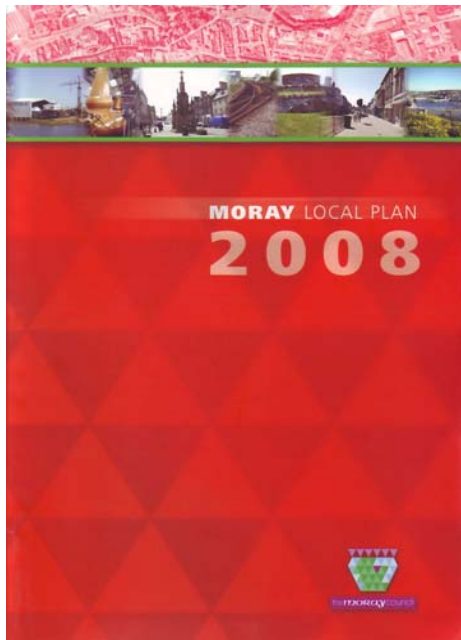
- National Scottish Planning Policy
- The environmental impact of a proposal
- The design of a development and its relationship to its surroundings
- Access, provision of infrastructure and planning history of the site
- Views of statutory consultees
- Legitimate public concern, or support, expressed on relevant planning matters



Moray Structure Plan 2007

6.0 Moray Structure Plan 2007 (Appendix 3)

- 6.1 The development strategy in the Structure Plan promotes growth and its strategic aims (p8) include a commitment to maintain and grow the population and to allow sensitive small scale development in rural areas.
- 6.2 Whilst the Structure Plan directs the majority of new growth to the established settlement hierarchy it also recognises that in rural Moray the development of small scale housing is essential to sustain communities (p17)
- 6.3 The Structure Plan has an explicit presumption in favour of housebuilding in rural areas on well located and designed sites that have a low environmental impact (p17). It also recognises that new development should be sensitive to areas of scenic, special scientific and nature conservation value (p17).
- 6.4 Policy 1 (Development and Community) part (e) of the Structure Plan (p24) encourages low impact and well designed development in the countryside to support local communities and rural businesses.



Moray Local Plan 2008

7.0 Moray Local Plan 2008 (Appendix 4)

7.1 The Local Plan reflects the Structure Plan strategy by directing the majority of new development to the established settlement hierarchy whilst allowing for development in rural Moray in accordance with a range of subject specific policies including the protection of specifically designated sensitive landscape and habitat areas.

7.2 The site is located in the countryside outwith the towns, villages and designated rural communities which make up the established settlement hierarchy. It is not within any of the specifically designated sensitive landscape areas defined in the Local Plan e.g. Countryside Around Towns, Areas of Great Landscape Value, National Scenic Areas, Coastal Protection Zones and Gardens and Designed Landscapes. It is also not within any of the designated sensitive habitat areas defined in the Local Plan e.g. Sites of Interest to Natural Science, Sites of Special Scientific Interest, RAMSAR sites, SWT Wildlife Sites, National Nature Reserves and Special Areas of Conservation.

7.3 As a proposal for a house on a greenfield site in the countryside outwith the settlement hierarchy and any specific landscape or habitat designations the lead policy to consider is Policy H8 – New Housing In The Open Countryside.

7.4 Policy H8 sets out requirements on the siting and design of new houses in the open countryside. It presumes against applications for more than two houses and allows for two or less houses on sites which;

- do not detract from the character and setting of existing buildings, or their surrounding area, when added to an existing grouping,

- are not overtly prominent (such as on a skyline, on artificially elevated ground, or in open settings such as the central areas of fields). Where an otherwise prominent site is offset by natural backdrops, these will be acceptable in terms of this criterion,
- have at least 50% of the site boundaries as long established features capable of distinguishing the site from the surrounding land (for example dykes, hedgerows, watercourses, woodlands, tracks and roadways).

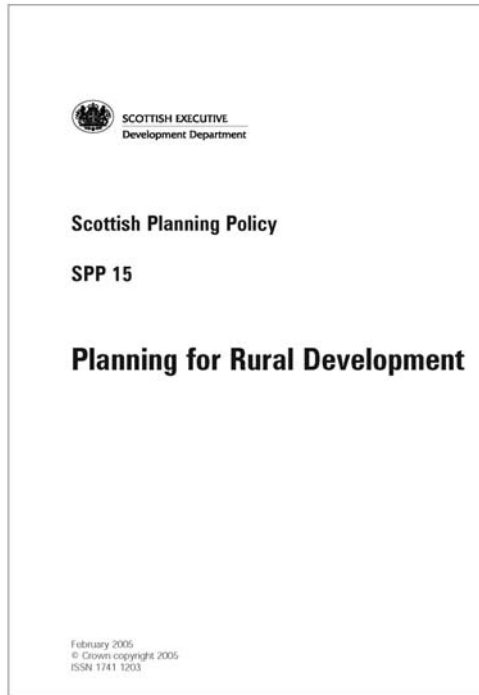
7.5 The siting and design criteria in Policy H8 are supplemented by the general criteria based Policy IMP1 – Development Requirements. This policy has a range of requirements applicable to all new development including that;

- scale, density and character must be appropriate to the surrounding area,
- development must be integrated into the surrounding landscape,

7.6 In addition to the siting and design requirements of Policies H8 and IMP1 there are a range of other Local Plan policies relating to infrastructure, servicing, and tree requirements as follows;

- Policy T2 – Provision of Road Access
- Policy T5 – Parking Standards
- Policy EP5 – Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)
- Policy EP10 – Foul Drainage
- Policy IMP1 – Development Requirements

7.7 In general terms these policies seek to ensure that new development is provided with a suitable and safe access, adequate car parking and adequate foul drainage (private systems are accepted for small developments in the countryside). They also seek to ensure the successful integration of new development with existing trees.



Scottish Planning Policy 15 - Planning for Rural Development

8.0 National Planning Policy and Guidance

8.1 National Planning Policy and Guidance is a material planning consideration to be taken into account in the consideration of planning applications. It is set out in Scottish Planning Policy (SPP's) and Planning Advice Notes (PAN's). There are SPP's and PAN's of relevance to this proposal as follows.

8.2 Scottish Planning Policy (SPP1 Replacement) (Appendix 5)

8.3 This replacement for SPP1 sets out the Scottish Governments overarching policy on land use planning.

8.4 It states that there is a requirement to promote and facilitate development with careful thought given to layout, design and construction with a clear focus on the quality of outcomes (p1, p2).

8.5 Scottish Planning Policy 15 (SPP15) – Planning for Rural Development (2005) (Appendix 6)

8.6 SPP15 encourages a more supportive attitude towards 'appropriate' development in rural areas (para 1). It encourages planning authorities and agencies involved in rural development to adopt a proactive approach to providing land for development. It sees the planning's authorities role in advancing the vision as being to enable and help create opportunities for development in sustainable locations wherever appropriate e.g. where infrastructure capacity and good access exist, or can be provided at reasonable cost, or to meet justifiable social and economic objectives (para 9). It recognises that the countryside should be able to absorb more people who are content



Planning Advice Note 72 - Housing in the Countryside

to live and work there (para 5).

8.7 SPP15 promotes the development of carefully considered sites with a general message that there is considerable scope for allowing more housing of this nature in the countryside (para 18).

8.8 SPP15 sees fit in the landscape as an important planning consideration. This is often the key to making development acceptable (para 27). It states that planning permission should be granted for developments which conform to the principles and objectives described in this statement (Para 37).

8.9 Planning Advice Note 72 (PAN72) – Housing in the Countryside (2005) (Appendix 7)

8.10 PAN72 starts by recognising changing circumstances and points out that one of the most significant changes in rural areas has been a rise in the number of people wishing to live in accessible parts of the countryside while continuing to work in towns and cities within commuting distance. It contains guidance in some detail on how to achieve a successful development in the countryside. The PAN acknowledges that there will continue to be a demand for single houses, often individually designed, but these have to be planned, with location carefully selected and design appropriate to locality (Page 7).

8.11 The PAN gives advice on location within the landscape by stating that most new developments should try to fit into or nestle within the landscape. Skyline development should normally be avoided, as should heavily engineered platforms.

8.12 Setting a building against a backdrop of trees is identified in the PAN as one of the most successful means by which new development can blend with the landscape. However it also states that the purpose of new planting is not to screen or hide new development, but to help integration with the surrounding landscape (Page 11).

9.0 Main Issues

9.1 Having set out the policy background it is now necessary to consider the main issues that arise from the proposal in relation to this policy context. The main issues are considered to be;

- the principle of the development
- infrastructure and servicing

9.2 Principle of the Development

9.3 There is a clear commitment in National Planning Policy and Guidance and the Moray Structure Plan Strategy to the principle of well sited and designed new housing in the countryside.

9.4 The Moray Local Plan 2008 recognises this and allows for new housing subject to siting and design criteria being met with additional controls in designated areas of landscape and habitat significance. The site is not within any areas of designated landscape or habitat significance.

9.5 The principle of the acceptability of the site itself requires to be tested primarily against Local Plan Policy H8 – New Housing in the Countryside. Policy H8 starts off by saying that it assumes against multiple house applications (more than 2) on the basis that these are more appropriately directed to Rural Communities (policy H6) and the replacement of Existing Buildings (policy H7). The application is for a single house and as such is in accordance with the general thrust of the policy in terms of the number of houses being applied for. Policy H8 goes on to set out three specific criteria under the



Aerial photo showing individual and defined location of site

heading "siting" which have to be met for the principle of a site to be acceptable.

9.6 Firstly the house must not detract from the character and setting of existing buildings, or their surrounding area, when added to an existing grouping. The proposed house will be sited on an individual and discreet area of land which is very well defined with a strong backdrop of rising land to the North and also to the East towards Sillyearn Wood. It is not part of any existing grouping. The key requirement of this first criteria is to avoid detracting from the character and setting of existing buildings, or their surrounding area, when a new dwelling is "added to an existing grouping". As an individual and well defined site the proposed house will not be an addition to an existing grouping. Therefore by definition it cannot fail this part of the policy.

9.7 The second of the siting criteria within Policy H8 is that the dwelling must not be overtly prominent. Examples of overtly prominent locations given within the policy are sites on a skyline, on artificially elevated ground, or in open settings such as the central areas of fields. Where an otherwise prominent site is offset by natural backdrops the policy states that these will be acceptable in terms of this criterion. The site cannot be said to represent any of the forms of "overtly prominent" location precluded by the policy. It is not on the skyline, it does not occupy artificially elevated ground and it is not in an open setting such as the central area of a field. Not only is it not an "overtly prominent" location but neither can it be described as "prominent" under the policy. Even if it could be described as prominent it would none the less comply with this leg of the policy because it has a strong natural backdrop of rising land to the North and to the East towards Sillyearn Wood. The policy specifically allows for prominent sites (which this is not) where the site has a natural backdrop. This site is not prominent and it has

natural backdrops to the North and East.

9.8 The third and final part of the siting criteria under Policy H8 is that the site should have at least 50% of its boundaries as long established features capable of distinguishing it from the surrounding land. Examples of acceptable boundaries described in the policy are woodlands, dykes, hedgerows, watercourses, tracks and roadways. The site has been carefully chosen to fit the house into a pocket of land which is defined and enclosed by the existing public road to the West and a long established track to the North. These defining and enclosing boundary features exceed the 50% requirement of the policy.

9.9 It is considered that the proposed site exceeds the siting requirements of Policy H8. In doing so it also satisfies the siting requirements of Policy IMP1 which requires the development to be integrated into the landscape.

9.10 Infrastructure and Servicing

9.11 Local Plan policy requirements for infrastructure and servicing relevant to this proposal relate to access, parking and drainage.

9.12 Policies T2 (Provision of Road Access) and T5 (Parking Standards) require a suitable and safe access to be provided from the public road along with car parking in accordance with the Councils parking standards.

9.13 The access will be from the public road along the West boundary of the site and the site is large enough to accommodate parking as required by the Councils Car Parking

Standards. The case officers report of handling (Appendix 1) also confirms that the Councils Transportation Manager recommended approval of the proposal subject to conditions.

9.15 Policy EP10 (Foul Drainage) allows for private drainage systems (septic tanks/soakaways) for small scale development in the countryside with a preference for discharges to land rather than surface waters. A septic tank/soakaway system with a discharge to land is proposed.

9.16 The use of Sustainable Urban Drainage Systems (SUDS) is promoted by Policy EP5 (Surface Water Drainage: Sustainable Urban Drainage Systems). SUDS will be provided and the detail can be controlled through planning conditions.

10.0 Reasons for Refusal

- 10.1 The reasons for refusal in the decision notice dated 27th October 2009 start off by saying that the proposal is contrary to policy 1 (e) of the Moray Structure Plan 2007. However it has already been shown that the case officers report of handling, under the heading "Development Plan Policy", does not identify any departure from Structure Plan policy 1.
- 10.2 It is stated in reason 1 that the *"proposal would occupy a roadside position within an open setting visible from a large part of the surrounding countryside and adjoining public roads"*. Policy H8 is entitled "New Housing in the Open Countryside". It sets out criteria by which new houses are acceptable in the "open" countryside. It does not preclude sites by the roadside or in open positions. Indeed by definition the heading of the policy itself accepts sites in the "open countryside". What the policy does preclude are sites which do not meet the three specific siting criteria laid out in Policy H8 under the heading "siting". It has already been shown that the proposal meets these siting requirements.
- 10.3 Reason 1 goes on to state that the *"development would represent inappropriate overtly prominent development in the countryside, which would neither be low impact or well located, and would detract from the rural character of this part of the countryside"*. Local Plan policy H8 gives specific examples of what are considered to be "overtly prominent" sites. It has already been shown that this proposal does not involve any of the examples of an overtly prominent site referred to in the policy.

- 10.4 The existence of a woodland to the North of the site is acknowledged in reason 1 but it is stated *"that it is not fully established to provide a backdrop to offset such a prominent site"*. This woodland is visible when approaching the site from the South along the minor public road through Bracobrae. As the road drops down to the site the significance of the woodland is reduced in any event as the site is well below the main level of Bracobrae. Much more significant, and not acknowledged in either the reasons for refusal or the report of handling, is the strong backdrop provided by rising ground to the East, upwards towards Sillyearn Wood, and also by the rising ground to the North. The backdrops to the North and East contain the site within the landscape when viewed from the two main approaches, from the South and West (see photographs attached to statement).
- 10.5 Reason for refusal number 1 says that the proposal would detract from the rural character of this part of the countryside and reason for refusal number 2 states that there are no material considerations to warrant a departure from policy. Firstly it is not accepted that the proposal is a departure from policy. It complies with policy and therefore is acceptable in relation to the rural character of the area. Secondly, and very significantly, it is not accepted that the proposal has been fully assessed in relation to both the setting of the site and the *"rural character of this part of the countryside"*
- 10.6 An intrinsic part of the rural character of this part of the countryside is the housing which exists at Bracobrae, much of which has been relatively recently approved by the Council and as such was considered acceptable in this location. Whilst applications have to be considered on their merits it is also the case that planning history is a material planning consideration (ref para 5.3 above).

10.7 Between Cairnhill at the Southern end of Bracobrae and the present site at the Northern end of Bracobrae there are a total of 24 houses (refer to Photograph 1) with planning consent for another 5 houses. Many of these properties, especially the recently approved and developed sites, are in much more elevated positions than the proposed site and have a much more significant impact (refer to attached photographs). Any assessment of the "rural character of this part of the countryside" must include recognition of these sites. Taken in context the proposed site not only complies with policy but refusal of the proposal is inconsistent with the planning history of the area which is a material planning consideration and as such should be given weight in the decision making process.

9.0 Conclusion

- 9.1 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise.
- 9.2 This proposal is for a single house in a well defined location with a good backdrop.
- 9.3 National Planning Policy and Moray Councils Structure and Local Plan policies all encourage well sited houses in the countryside. Whilst the Local Plan allows for new houses in the countryside it also seeks to protect, through specific designations, areas of landscape and habitat significance. The site is not within any of the areas designated in the Local Plan as being of landscape or habitat significance.
- 9.4 The lead policy in the Local Plan for testing the acceptability of the site as a suitable location for a house in the countryside is Policy H8 – New Housing In The Open Countryside. This policy contains specific criteria about the siting of new dwellings and it has been shown that the proposal meets the criteria set out in the policy.
- 9.6 It has also been shown that the proposal is acceptable in relation to other relevant Local Plan policies regarding the provision of access, parking and drainage.
- 9.7 Despite being advertised in the local press there were no objections from third parties. There were also no objections to the proposals from any of the statutory consultees.

- 9.8 The reasons for refusal suggest that the proposal would lead to a development that would detract from the character of this part of the countryside. However it has been shown that the proposal complies with policy so this cannot be the case especially when the site is seen in the context of the character of the area which includes a number of existing and more recent houses approved by the Council as acceptable in this area.
- 9.7 As the proposal is in accordance with the Development Plan and there are no known material considerations to the contrary it is considered that the application should be approved.

Photograph 1

Aerial photo showing site in relation to Sillyearn Wood to South East and other existing houses along Bracobrae (white dots), with approved but unbuilt houses shown as white circles. 24 houses in total, 7 of which were approved in recent years by Moray Council with planning consent for a further 5 new sites.



Photograph 2

Site viewed from main approach from West showing strong backdrop of rising land to East and South East.



Photograph 3

Site viewed from main approach from South showing strong backdrop of rising land to North including wooded areas.



Photograph 4

New house at South of Bracobrae (Islaview) as viewed from A95 Keith/Banff Road. Elevated position open to view from A95 with limited backdrop. Second house approved immediately to East (to right as looking at the photo).



Photograph 5

3 new houses at South of Bracobrae (Cairnhill) as viewed from public road to West through Braco Farm. Elevated position, open to view over wide area with limited backdrop. Two more house sites have been approved, but not yet developed, immediately to the South of these houses (to the right as looking at the photo).



Photograph 6

New house to South of site at Bracobrae (Sunnyside) as viewed from public road to West of Bracobrae. Elevated position, visible over wide area. A second house has been approved (under current Local Plan policies) within the original site, uphill of the caravan in the photograph to the right of house.

