

*Ardroil
72 Pinewood Road
Mosstodloch
Fochabers
Moray
IV327JU*

To Whom It May Concern:

14th April 2011

Appeal for Retrospective Planning Permission

Dear Sir

My previous request for retrospective planning permission for change of use of my purchased amenity ground to garden ground has been refused on the grounds of council policies and hence I am appealing for due consideration as detailed below.

The land as outlined in the plan was owned by Strathdee Properties with the intention of developing it into housing. The area was felled of all trees approximately 16 years ago and been left to degrade since this period with no regeneration or replacement programme and has now in essence become an eyesore.

The opportunity arose to purchase an adjacent apportionment of additional ground in line with my existing property boundary and this was concluded in August 2009 between our two solicitors and now forms part of our title deeds.

The advice received at the time was to fence off the purchased ground at a similar height level as the existing boundary fencing at 1.8m (6ft). The ground was then landscaped at considerable expense and has received numerous complimentary comments from neighbouring properties.

On the 28th October 2010, over a year later I received a letter from The Enforcement Planning Officer at Moray Council.

As the bargain had been concluded through solicitors it was my understanding that all the legal requirements and necessary advisory elements would have been dealt with at that time.

I arranged a meeting to discuss the situation with Stuart Dale who I found to be of a pleasant manner but left under no uncertain terms that my application for change of use would be refused as he referred on a number of occasions to the appeal procedures to the Scottish Ministers.

However, I went through the process for retrospective planning permission on the basis that I wanted everything to be totally legal and I was told that if I failed to apply there would be an enforcement order recorded against my property disabling us or our dependants to sell if they so desired.

After several requests for differing sums of money for the application process and request for plans which I had already submitted I was disheartened but not surprised at the ultimate outcome for refusal to grant permission.

The refusal has been based on Council policies and has not taken the neighbouring households into account. No objections were received and this constitutes a bias in the decision making process which is evident in the assessment of proposal where it states that a neighbour who had previously requested a change of use "would not be supported." This was not made public knowledge and should not have been noted in this application as relevant.

The four reasons for refusal are totally unsubstantiated and are purely speculative:

1. The only public benefit currently is the use of the path for dog walkers. – This is still in existence and is unaltered and therefore the public benefit has not changed in any way.
2. Hindering and obstructing a comprehensive improvement plan – There has been no improvement in the 12 years since we purchased our property or since the trees were felled some 4 years previous to that. The area has been left to degrade into a wasteland where vast sums of money need to be spent to regenerate it.
3. Enclosed garden areas being detrimental are nonsense - quite the opposite. This is evident from the lack of objections from neighbouring residents who have complimented the changes.
4. Detrimental impact on the core path running through the area – No impact on the path and is being currently utilised by dog walkers as previously.

Also noted from the enforcement officer is the requirement for planning for fencing or structures over 1m for the purchased land area and elsewhere a contradictory statement that any fencing is detrimental to the appearance of the area. There would be very little difference in taking 0.8m off the current fencing area still leaving it enclosed.

The TPO is also referred to in the summary statement within one of the associated policies and later revoked.

It refers on several occasions to the impact on a buffer zone between the properties and the adjacent fields – no benefit in the buffer zone and very few housing schemes have a zoned area between housing and other land so in this respect it is irrelevant. I also note that although I am the only resident who has submitted a planning application as advised at considerable expense there are several references in the decision making to the other 6 households who have also purchased additional ground.

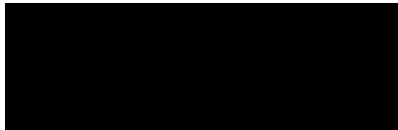
The reference to vehicular access does not pertain to my property as all access for improvements were made through my existing garden grounds and my exit from the fencing area is a single gateway. The vehicle tracking that has been noted has been used by others for their fencing and plot improvements only although this again constitutes bias in the decision making process but does not constitute an adversity to the condition of the recreational area but instead gives a level walking area which is not currently maintained.

I must stress that I feel the decision to refuse permission was totally based on existing policies alone which have no current benefit to the community.

I have taken the liberty of taking some photos of the amenity landscape that are available on request that shows the recreational area as a dumping ground for litterlouts and drinking parties and evidence of a degenerating area which resembles an overgrown wasteland.

I hope I have given you enough information to enable me to challenge the decision and feel free to give me a call at any time on my mobile number above. Thanks

Yours Faithfully

A solid black rectangular box used to redact the signature of the sender.

Iain Macleod

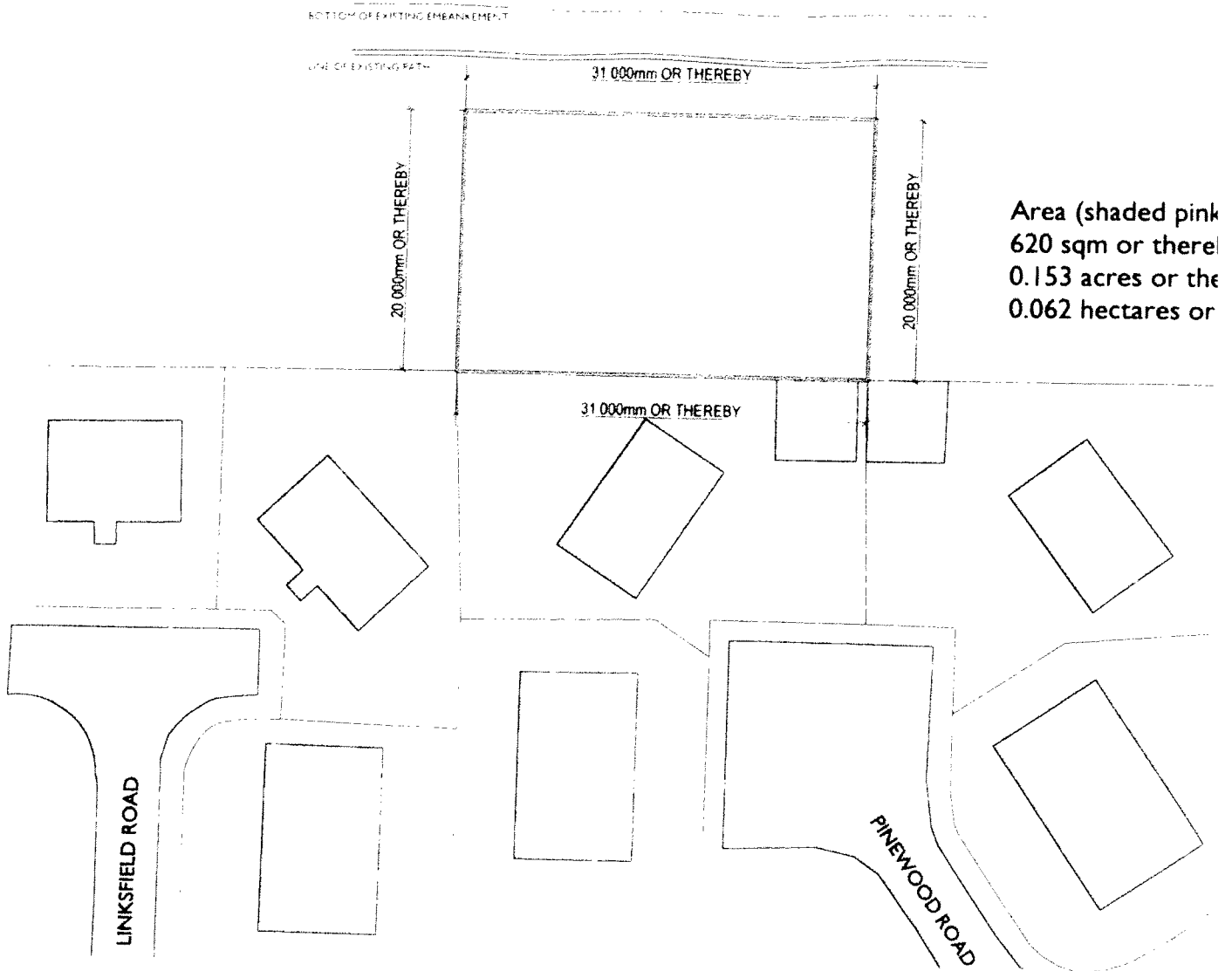
PLAN REFERRED TO IN THE
FOREGOING DISPOSITION :

Town & Country Pl
(Scotland) Act, 1
as amended

REFUSE

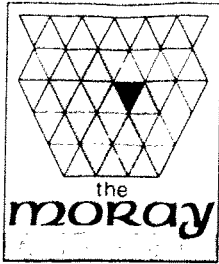
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**THE MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT
1997, as amended**

REFUSAL OF PLANNING PERMISSION

**[Fochabers Lhanbryde]
Application for Planning Permission**

TO Mr Iain Macleod
Ardroil
72 Pinewood Road
Mosstodloch
Fochabers
Moray
IV32 7JU

With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

Retrospective application for change of use of waste ground to garden ground at Ardroil 72 Pinewood Road Mosstodloch Fochabers

and for the reason(s) set out in the attached schedule.

Date of Notice: **27th January 2011**

HEAD OF DEVELOPMENT SERVICES
Environmental Services Department
The Moray Council
Council Office
High Street
ELGIN
Moray IV30 1BX

IMPORTANT
YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW

SCHEDULE OF REASON(S) FOR REFUSAL

By this Notice, the Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The application is contrary to the Moray Local Policies E4, ENV6, ENV10 and IMP1 in that

1. The encroachment onto the public open space for private garden space is not to any local public benefit which outweighs the value of the site as a buffer zone between the housing development and agricultural fields.
2. Approval of this application would result in hindering and obstructing any overall comprehensive improvement plan for the designated area, and will result in development of the area in a piecemeal rather than planned manner.
3. The creation of enclosed garden areas encroaching on the amenity strip is detrimental to the concept of the area being an informal recreational open space and significantly impacts on the character and amenity of the area, as well as reducing the buffer between the built-up area and countryside.
4. The encroachment onto the open space for private garden ground will have a significant and detrimental impact on the amenity of the proposed core path running through this area.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
		Location Plan
DEED/72PINEMOSSTOD		Site and Location Plan

**DETAILS OF ANY VARIATION MADE TO ORIGINAL PROPOSAL,
AS AGREED WITH APPLICANT (S.32A of 1997 ACT)**

N/A

**NOTICE OF APPEAL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, The Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from www.eplanning.scotland.gov.uk

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

REPORT OF HANDLING

Ref No:	10/01928/APP	Officer:	Jim Gibson
Proposal Description/ Address	Retrospective application for change of use of waste ground to garden ground at Ardroll 72 Pinewood Road Mosstodloch Fochabers		
Date:	26.01.11	Typist Initials:	gt

RECOMMENDATION

Approve, without or with condition(s) listed below	N	
Refuse, subject to reason(s) listed below	Y	
Legal Agreement required e.g. S,75	N	
Notification to Scottish Ministers/Historic Scotland	N	
Hearing requirements	Departure	N
	Pre-determination	N

CONSULTATIONS

Consultee	Date Returned	Summary of Response
Environmental Health Manager	13/12/10	No objections
Contaminated Land	13/12/10	No objections
Development Plans		Application should be refused on policy grounds

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
Policy 2(f)		
IMP1: Development Requirements		
Mosstodloch - ENV6 Green Corridors	Y	
Mosstodloch - ENV10 Regeneration Proposa	Y	
E4: Green Spaces	Y	

REPRESENTATIONS

Representations Received		NO
Total number of representations received		
Names/Addresses of parties submitting representations		
Name	Address	
Summary and Assessment of main issues raised by representations		
Issue:		
Comments (PO): No objections/representations received.		

OBSERVATIONS – ASSESSMENT OF PROPOSAL

The retrospective application is a result of investigations and work carried out by the Council's Enforcement officer. It has been established that seven properties have extended their garden ground/curtilage into the amenity strip without any consent or contact with the Planning Authority. This type of development constitutes a change of use which requires planning consent. All the proprietors who have extended their curtilages were written to and advised of the situation. This is the only application to have been received as a result of this contact.

The proprietor at No 10 Linksfield Road, Mosstodloch enquired if the changing of the woodland area to a garden ground would cause any issues in 2007. The Departments response was to advise that a planning application would be required for such a change of use and that in terms of policy such an application would not be supported. This proposal was not developed beyond this position.

The application shows the garden ground of the property at 72 Pinewood Road being extended into the designated amenity strip some 20m deep by 31m wide. This is a considerable encroachment into the amenity strip which is just over 33m deep in total.

The amenity strip has been designated as such through a number of Local Plans and in addition currently has a Tree Preservation Order attached to it. In the process of serving the TPO, the trees were destroyed. This resulted in court action being taken by the Council. Since that time the land has been left in this rough condition though there is a relatively formalized footpath running through it. This footpath is suggested as a core path in the Moray Core Paths Plan, Final Draft / 2008. The path is not physically obstructed by the development.

The Land Reform (Scotland) Act 2003 requires the Council to draw up a plan for a system of paths (core paths) that provides a basic framework of routes sufficient for the purpose of giving the public reasonable access throughout their area.

The applicant has spent considerable time and resources on cultivating and developing the area of ground into part of his garden.

The application requires to be considered against Policies E4, ENV6, ENV10 and IMP1

E4: Green Spaces states

"Development which would cause the loss of, or impact on, areas identified under the ENV designation in settlements and the 'Amenity Land' designation in rural communities will be refused unless:

1. The proposal is for public use that clearly outweighs the value of the green space; and
2. The development is sited and designed to minimize adverse impacts on the recreational, amenity and biodiversity of the site.

Development proposals on sites with an identified sporting or recreational function will also be considered against Policy CF2: Recreational Land and Open Space."

It is not considered that Policy CF2 applies with regard to this application.

ENV6 Green Corridors/Natural/Semi Natural Green spaces states:

"Mosstodloch woodland strip; Trees and verges of eastend; Balnacoul Wood."

ENV10 Regeneration Proposals states:

“Former woodland strip to be retained for enhancement to create informal recreational open space and landscaped setting to north west edge of village.

The current TPO designation on the trees at the woodland strip ENV6 will be revoked”

Observations

On balance and whilst there is some sympathy for the applicants’ position, the piecemeal encroachment of garden areas into the designated amenity strip creates a significant and undesirable change to the character of the area. The area of amenity ground accessed from Garmouth Road has experienced no encroachment and has an informal, open character. This area also acts as a buffer between the built-up area of the village and countryside. These attributes contribute to the environment and amenity of Mosstodloch and as such, are protected as greenspaces (ENV6, ENV10 & E4).

The only history regarding any of the changes of the ground to garden ground is the one in 2007. None of the 7 developed areas were subject of an enquiry or planning application.

The works carried out to date, all unauthorised, by a number of owners have made the area appear much more formal in character in that they have removed regular rectangular shaped areas from the original open space and all now have 6ft high boundary enclosures and a formal maintained and laid out appearance as garden areas. This is detrimental to the concept of the area being an informal recreational open space and significantly impacts on the character and amenity of the area, as well as reducing the buffer between the built-up area and countryside.

The size of the area proposed as garden ground which is similar in extent to the other properties which have also carried out similar unauthorised development, raises the possibility of future proposals for the sub-division of plots. There is evidence of vehicular access to the rear of some of the properties with double gates and vehicle tracks. This also raises concern over pedestrian safety given the area of amenity land has been reduced to 2m wide.

It is accepted that the current condition of the amenity strip is not ideal, however, approval of this application and acceptance of the additional 6 unauthorised encroachments would result in hindering and obstructing any overall comprehensive improvement plan for the designated area, and will result in development of the area in a piecemeal rather than planned manner.

The correct procedure to follow to achieve changes to the designation of this area would to be to submit a representation to this effect when the current Local Plan is to be reviewed.

This is the clear intention of the designation of the Moray Local Plan 2007 and in order to protect this potential improvement it is recommended that the application be refused.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

None

HISTORY				
Reference No.	Description			
07/00770/FUL	Erect a conservatory at 72 Pinewood Road Mosstodloch Fochabers Moray IV32 7JU			
	Decision	Permitted	Date Of Decision	12/06/07

09/00713/FUL	Erect extension at 72 Pinewood Road Mosstodloch Fochabers Moray IV32 7JU		
	Decision	Permitted	Date Of Decision

ADVERT		
Advert Fee paid?	Yes	
Local Newspaper	Reason for Advert	Date of expiry
Northern Scot	No Premises	17/01/11
Northern Scot	Departure from development plan	17/01/11

DEVELOPER CONTRIBUTIONS (PGU)	
Status	

DOCUMENTS, ASSESSMENTS etc. *		
<i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i>		
Supporting information submitted with application?		NO
Summary of main issues raised in each statement/assessment/report		
Document Name:		
Main Issues:		

S.75 AGREEMENT		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			