

Erect House and Garage at Speyview, Dundurcas, Orton, Fochabers

February 2015

Grounds for Review of Refusal of Planning Permission

Planning Application Ref No 14/01971/APP



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1.0 Introduction

- 1.1 These grounds for review of a decision to refuse planning permission for a house on a site at Speyview, Dundurcas, Orton, Fochabers are 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 10th December 2014.
- 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 (Appendix 1) was dated 13th October 2014 and was refused under the Councils Delegation scheme by the case officer on 10th December 2014.

2.2 The reasons for refusal state that;

1 – The proposal is contrary to the adopted Moray Local Plan 2008 Policy T2 and IMP1 because, in terms of servicing the site and road safety implications and the absence of evidence to demonstrate control over all the land within the visibility splay area to ensure the required splay can be provided and maintained, a safe and suitable access onto the public road has not been provided and the development would involve the use of an access onto the B9015 Rothes-Kingston Road where visibility is severely restricted by adjacent hedges/trees and would likely give rise to conditions detrimental to the safety of other road users.

2.3 The case officer's report of handling for the planning application (Appendix 2) was dated 9th December 2014.

2.4 The report confirms that apart from Transportation there were no objections from statutory consultees which included the Councils Environmental Health Manager, Environmental Protection Manager, Contaminated Land Team and Scottish Water.

2.5 The report identified three representations. One in support of the proposal stating that the development of the site would benefit the appearance of the area with the other two expressing concerns about road safety and overlooking. The planning case officer

confirmed that there was not an issue related to overlooking and that the application was being refused on grounds related to the access.

- 2.6 Two previous applications for dwellings on the site were approved. In 2002 consent was granted for a single dwelling (ref 02/00204/FUL) and in 2007 consent was granted to the present applicant for two dwellings (ref 07/01860/OUT). In 2011 an application to revise the consent previously granted in 2002 was refused for similar reasons to the application subject of this review. An appeal to the Local Review Body was rejected on a narrow vote of two to one. The previous refusal and related LRB decision do not in themselves prejudice the consideration of this review especially as a more complete presentation of policy and material considerations is now available.



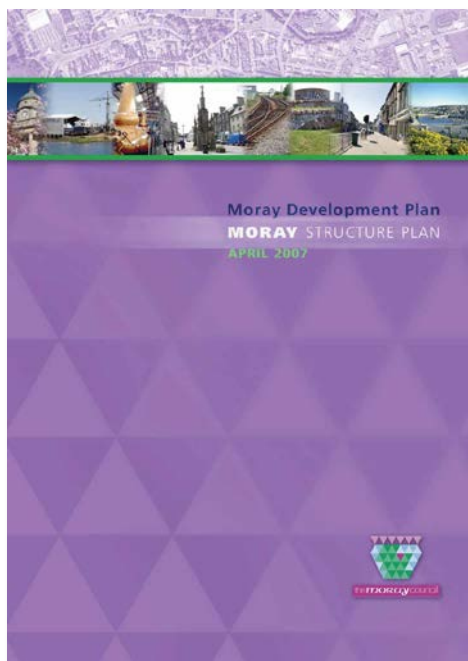
elevations – NTS (full plans in Appendix 1)

3.0 The Proposal

- 3.1 The proposal is for a simply proportioned single dwelling served by a public water supply and private drainage (septic tank/soakaway) and SUDS. Access will be from the B9015 public road at the South West end of the plot.
- 3.2 The design of the proposed house is 1½ storey with accommodation in the roofspace. It incorporates traditional proportions and finishes including natural slate on the roof, with smooth white render and sections of vertically panelled timber linings on the walls.

5.0 Development Plan Policy

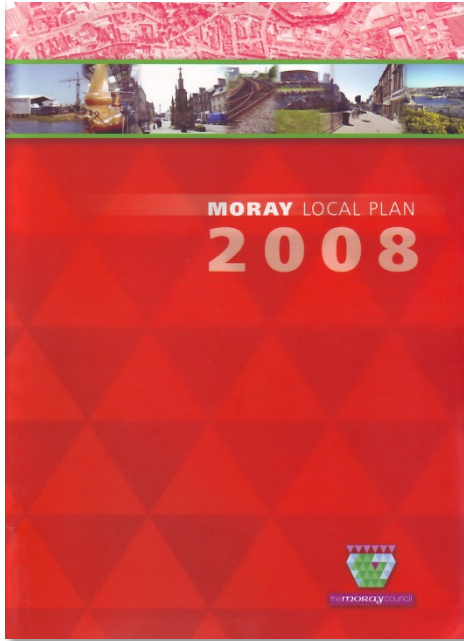
- 5.1 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise.
- 5.2 The Development Plan for Moray comprises the Moray Structure Plan 2007 approved in April 2007 and the Moray Local 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 3/2013 (Appendix 3) 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 4)

- 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 house building 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 Structure Plan Policy 1 (e) (Development and Community) (p24) encourages low impact and well designed development in the countryside.



Moray Local Plan 2008

7.0 Moray Local Plan 2008 inc Supplementary Guidance on Housing in the Countryside (Appendix 5)

7.1 The Local Plan reflects the Structure Plan strategy and allows for housing in the countryside subject to certain criteria being met.

7.2 The site is located in the countryside. It is not within any of the designated sensitive areas identified in the Local Plan e.g. Countryside Around Towns, National Scenic Areas, Coastal Protection Zones and Areas of Great Landscape Value. It is not within any designated sensitive habitats identified in the 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 new house site in the countryside 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 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 or linear extension,
- 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 As regards design policy H8 also requires;

- a roof pitch of between 40-55 degrees.
- Gable width of no more than 2.5 times the height of the wall from ground to eaves level.
- Uniform external finishes including slate or slate effect roof tiles
- Vertical emphasis and uniformity to windows
- Additional planting within the plot
- Boundaries sympathetic to the area.

7.6 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,
- adequate roads, public transport and cycling and footpath provision must be available, at a level appropriate to the development,

7.7 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 EP9 – Contaminated Land
- Policy EP10 – Foul Drainage

7.8 In general terms these policies seek to ensure that new development is provided with adequate infrastructure including a suitable and safe access, adequate car parking and adequate foul drainage (private systems are accepted for small developments in the countryside).

7.9 The Council has Supplementary Guidance on Housing in the Countryside which states that an application for one or two houses situated within or adjacent to an existing group of recently constructed or approved dwellings may be considered favourably subject to compliance with the provisions of policy H8 and IMP1. Site characteristics and the character of the surrounding area will be taken into account when looking at the issue of whether or not a build up of development will be detrimental to the rural character of the open countryside. The Council also has guidance regarding access requirements in the document entitled – The Moray Council Transportation Service – Requirements For Small Developments In The Countryside.



Scottish Planning Policy (SPP)

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) and Planning Advice Notes (PAN's).

8.2 Scottish Planning Policy -SPP - (Appendix 6)

8.3 Scottish Planning Policy sets out the Scottish Governments overarching policy on land use planning.

8.4 The section on Promoting Rural Development supports the promotion of a pattern of development that is appropriate to the character of the particular area.

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

8.6 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 (P7).

8.7 The PAN gives advice on location within the landscape and specifically states that housing related to existing groups will usually be preferable to new isolated development (page 7). It requires new housing in small groups to avoid a suburban



Planning Advice Note 72 - Housing in the Countryside

appearance, by being sympathetic in terms of orientation, topography, scale, proportion and materials to other buildings in the locality.

- 8.8 The PAN cautions against skyline development (P11) to ensure that it does not interrupt and conflict with the flow of the landform or appear out of scale.
- 8.9 As regards design the PAN points out (P15) that there is considerable scope for creative and innovative solutions whilst relating a new home to the established character of the area.
- 8.10 The PAN states (P13) that rural areas need design solutions and road standards which are appropriate to their character and setting.

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;

- Siting
- Design
- Infrastructure and servicing including access

9.2 Siting

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. There is particular support for houses related to existing groups as is the case with the site under appeal.

9.4 Structure Plan policy 1 (e) encourages low impact well designed development in the countryside.

9.5 The Moray Local Plan 2008 reflects Structure Plan policy. The lead policy for testing the acceptability of a new site in the countryside is Policy H8 (New Housing in the Open Countryside).

9.6 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 it is in accordance with the general thrust of the policy in terms of the number of houses being applied for.

- 9.7 Policy H8 sets out three specific criteria under the heading "siting" which have to be met for the principle of a site to be acceptable.
- 9.8 Firstly 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 are woodlands, dykes, hedgerows, watercourses, tracks and roadways. The site meets and exceeds the boundary requirements of the policy. It has the required boundary definition; a public road along the South East boundary with existing houses immediately to the North East and South West.
- 9.9 The second of the siting criteria within Policy H8 is that the dwelling must not be overtly prominent. Examples of overtly prominent locations identified in the policy are sites on a skyline, on artificially elevated ground, or in open settings such as the central areas of fields. The site is not on the skyline, on artificially elevated ground or in the centre of a field.
- 9.10 The third element of the siting criteria under Policy H8 states the house must not detract from the character and setting of existing buildings, or their surrounding area, when added to an existing grouping or linear extension. The proposed plot is a gap site within a long established group of existing houses.
- 9.11 The case officer's report of handling also confirms that the siting of the proposal is acceptable in relation to the requirements of Policy H8.
- 9.12 Design**
- 9.13 There are a series of specific design requirements within policy H8. They are all met by the

proposals as follows;

- a roof pitch of between 40-55 degrees
- Gable width of no more than 2.5 times the height of the wall from ground to eaves level.
- Uniform external finishes
- Vertical emphasis and uniformity to the windows
- Additional planting within the plot
- Boundaries sympathetic to the area

9.14 The case officer's report of handling also confirms that the proposal complies with the design requirements of Policy H8.

9.15 Overall it is considered that the proposal meets the requirements of Policy H8 and the related Supplementary Guidance on Housing In The Countryside. In doing so it also satisfies the requirements of Policy IMP1 which requires development to be integrated into the landscape and of a character appropriate to the surrounding area.

9.16 Infrastructure and Servicing inc Access

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

9.18 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.

9.19 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.

- 9.20 The water supply will be from the public mains.
- 9.21 Car Parking can be provided within the site as required by Policy T5 (Parking Standards).
- 9.22 The sole reason for refusal of the planning application relates to Policy T2 – Provision of Road Access. This policy requires a suitable and safe access from the public highway to be provided. The justification for the policy says that road access arrangements should be suitable for the proposed development. National Planning Advice PAN 72 (ref above) also states that rural areas need design solutions and road standards which are appropriate to their character and setting.
- 9.23 The reason for refusal on the decision notice states that the proposal is unacceptable under Policy T2 because the applicant has failed to demonstrate control over land required for the visibility splay to ensure that the splay can be provided and as a result the proposal would result in the use of an access onto the public road where visibility is severely restricted by adjacent hedges/trees giving rise to conditions likely to be detrimental to the safety of other road users.
- 9.24 The splay being sought is 2.4m x 152m and this involves a small sliver of land over two adjacent plots to the North East of the site. The first of these immediately to the North East has an empty cottage with an overgrown plot containing a single tree beside the road and some overgrown vegetation as referred to in the reason for refusal. The owner of this land has not been prepared to discuss or provide any agreement relating to the provision of the part of the splay which affects his land. The owner of the property (Benview) beyond the vacant cottage, which is

crossed by a smaller sliver of the splay, is prepared to agree to the provision of part of the splay over his land. Therefore the review requires to be determined on the basis of the splay which can be provided without affecting third party land in the plots immediately to the North East. This extends to 2.4m x 78.8m as determined during the course of the previous application and case heard by the LRB.

- 9.25 The Planning act requires “material considerations” to be taken into account when determining planning applications in relation to Development Plan policies. National planning advice in Circular 3/2013 (Development Management Procedures – Appendix 3) makes it clear that it is for the decision maker (in this case the LRB) to assess the weight to be attached to “material considerations” in relation to the interpretation of Development Plan policy.
- 9.26 Material considerations identified in Circular 3/2013 include the planning history of the site and its relationship to its surroundings, both of which are significant in this case.
- 9.27 **Relationship to Surroundings** - The proposal relates to a gap site within a long established group of nine houses, two of which are located to the North East of the plot with the remaining seven to the South West. All nine are on the North West side of the public road. With the exception of the property at the South West end of the group all of the remaining houses have a vehicular access onto the public road. The configuration of the bulk of the existing accesses is such that cars have to either reverse into or out of them whereas turning facilities can be provided within the proposed site.
- 9.28 There is nothing to suggest that the access arrangements of the existing group of properties are fundamentally flawed or hazardous requiring any mitigation. For example there is no reduced

speed limit, solid white lines down the centre of the road or evidence of difficulties for residents such as mirrors opposite accesses to assist entrance and exit. There are also street lights running along the length of the entire group of properties.

- 9.29 The issue with the access to the site has been the visibility achievable to the North East and the tree/hedging in the plot immediately to the North East. The achievable visibility excluding the small sliver of land over the plot to the North East is 2.4m x 78.8m. This compares very favourably with a number of other accesses at existing properties in the group containing the site. For example visibility to the North East (avoiding third party land) at Sonrie, Millhaven, Number 2, Kirkhill and the cottage immediately North East of the review plot ranges from only 2.4m x 16.5m to 2.4m x 45m (Appendix 8), all significantly less than the plot under review.
- 9.30 **Planning History** – The current applicant was previously granted planning consent for two dwellings on the site in 2007 (ref 07/00700/APP), under policies basically the same as those in the current Development Plan in terms of access (Appendix 5 – Moray Local Plan 2000 L/T4). The visibility splay achievable, or the need for any additional third party, land were not impediments to the consent. Prior to that, consent was granted for a single house in 2002 (ref 02/00204/FUL) and once again the visibility splay achievable or the need for any additional third party land were not impediments to the consent. It is acknowledged that in 2011 an application (ref 11/00700/APP) to revise the approval granted in 2002 was refused on similar grounds to the application under review. The refusal was subject of a review by the LRB (ref case 054) which supported the decision to refuse the application on a narrow vote of 2 to 1. The chair of the review supported the granting of planning permission taking account of the planning history of the site.

10.0 Conclusions

- 10.1 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise.
- 10.2 National Planning Policy and Moray Councils Structure and Local Plan policies all encourage well sited and designed houses in the countryside and there is a preference for the siting of new houses within existing groupings.
- 10.3 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 is acceptable under the criteria set out in the policy.
- 10.4 It has also been shown that the proposal is acceptable in relation to other relevant Local Plan policies regarding design, parking and drainage.
- 10.5 The sole reason for refusal relates to the adequacy of the access under Policy T2 because the applicant is being required to secure control over land outwith the site and his ownership for a small sliver of a visibility splay to the North East of the site. The owner of the land is not prepared to discuss or agree to this. This requires the review to be determined on the basis of the visibility splay which is available outwith third party land.

- 10.6 When determining planning applications material considerations have to be taken into account. In addition to the views of consultees these include the relationship of the site to its surroundings and the planning history of the site. It is for the decision maker (the LRB) to balance the weight of the material considerations in relation to policy.
- 10.7 It has been shown that the site is part of a long established group of nine houses where the existing access arrangements appear to function without the need for any obvious mitigation. The standard of visibility available to the North East for the proposed site compares favourably to other plots within the grouping containing the site.
- 10.8 The site has also been the subject of previous planning consents, under similar policies to the current Development Plan, for a single dwelling followed by two dwellings, where the visibility available was accepted and there was not a requirement for any third party land.
- 10.9 It is requested that the application be approved on review by the LRB in relation to policy on the basis of the case set out above including the material considerations described.

View of site from South. Proposed access to be at South West end of site immediately to North of access to existing property to South as shown on left of photograph.

Photograph 1



Existing access to adjacent property immediately to South of site.

Photograph 2



Existing access to adjacent property
immediately North of site.

Photograph 3



Existing properties immediately to South of site
containing a total of 6 existing accesses.

Photograph 4

