

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by Donald Harris, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2092
- Site address: land 50 metres south east of Swordale Cottages, Evanton IV16 9XA
- Appeal by Alpin Macdonald against the decision by The Highland Council to grant planning permission reference 13/00624/FUL dated 14 February 2013 subject to conditions
- The development proposed: erection of three houses and three garages
- The conditions appealed against are numbers 1,2,3,4 and 6
- Date of site visit by Reporter: 4 November 2013

Date of appeal decision: 27 November 2013

Decision

I ALLOW the appeal and VARY the terms of the planning permission by deleting conditions 3, 4 and 6 and substituting therefor the following conditions:-

(4) The existing hedge and trees along the north-west (roadside) boundary of the site shall be retained and there shall be no felling, lopping or topping of this feature without the prior written approval of the planning authority. For the avoidance of doubt, this condition applies to any necessary felling required for the development of any footpaths and pedestrian gateways to serve houses numbers 2 and/or 3.

Reason: In the interests of safeguarding the established amenity of the area.

(6) Prior to the first occupation of any second house, an additional passing place shall be provided by the developer on the public road between the site and the village of Evanton. The passing place shall not be constructed until its position and specification have been agreed in writing by the planning authority and the passing place shall be completed to the full satisfaction of the planning authority prior to the first occupation of the second house. For the avoidance of doubt, the additional passing place may be an entirely new passing place or an existing passing place which is improved pursuant to this condition.

Reason: To ensure that the public road access is improved to help accommodate the additional traffic generated by the development hereby approved.



Reasoning

Condition 1

1. Condition 1 is as follows:-

(1) No development shall commence until the type and colour of finished materials to be used in the development hereby approved is submitted and given the written approval of the Planning Authority. For the avoidance of doubt, the roof shall be finished in natural blue/black slates and the walls finished in a white/off-white or buff/sandstone coloured wet render.

Reason: In the interests of safeguarding the established amenity of the area.

2. The appellant wishes the roof to be of concrete tiles and the walls to be finished with dry dash harling in a buff/sandstone colour.

3. The issue here is the effect on the appearance of the group of dwellings in which the appeal site is located. When I visited the site, I saw that the roofs of the nearby properties in this group are predominantly of slate. I consider that this, as also the wet render walls included in the condition, would be more harmonious in the context of the existing group. I conclude that the proposed materials would detract from the pleasant quality of the group. I therefore refuse to vary the condition.

Condition 2

4. Condition 2 is as follows:-

(2) No development shall commence until the site access has been upgraded in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines and the attached Access Schedule with the junction formed with service layby to comply [with] drawing ref. SDB2. A hardstanding area for the storage of wheelie bins shall be provided and maintained adjacent to the access prior to first occupation of any part of the development to the satisfaction of TEC Services.

Reason: To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

5. The appellant wishes the condition to be amended so that the upgrading of the site access takes place before the first house is occupied, rather than before any development commences.

6. The issue is one of road safety and amenity, Although the appellant claims that the existing access is perfectly adequate to allow construction works to commence, it seems to me that it is particularly important that the access should be brought up to standard from the very beginning. This is because traffic is likely to be heavy when the buildings on the site are cleared and because the existing access serves the three houses in the converted

South Steading. A full standard would help to reduce the amount of mud brought on to the road and ensure that all vehicles were properly catered for. The proposed amendment would be against the interests of road safety and amenity, particularly for the residents of 1 – 3 South Steading. I therefore refuse to vary the condition.

Condition 3

7. Condition 3 is as follows:-

(3) Notwithstanding the provisions of Article 3 and Classes 1A, 1B, 3A,3B and 3D of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted with or without modification), no extensions, outbuildings or decking structures shall be erected, and no land re-profiling, engineering or other operations shall take place within the curtilage of the houses hereby approved without planning permission being granted on application to the Planning Authority.

Reason: In order to enable the Planning Authority to retain effective control over development between the houses and the road, where the houses have their principal elevations away from that road.

8. The issue here is whether the condition is necessary. Circular 4/1998 (The Use of Conditions in Planning Permissions at Annex A, paragraph 12) states that conditions should only be imposed where they are necessary. In this case, it appears that the condition was imposed on the assumption that the principal elevations of the houses would face south. The planning authority now accepts that they face north. Indeed, the front doors are on this elevation, while the south elevation has patio doors. The long front gardens would therefore not benefit from the permitted development rights referred to and the condition is unnecessary. I therefore conclude that the condition should be deleted.

Condition 4

9. Condition 4 is as follows:-

(4) The existing hedge and trees along the north-west (roadside) boundary of the site shall be retained and there shall be no felling, lopping or topping of this feature without the prior written approval of the Planning Authority.

Reason: In the interests of safeguarding the established amenity of the area.

10. The appellant seeks the removal of the existing hedge, with a new hedge to be planted further away from the road. The new hedge would incorporate pedestrian gates.

11. The issue is one of amenity. The existing hedge is a mature beech hedge which provides an attractive approach to the group of dwellings. Its removal would detract from the pleasant rural character of this approach and expose the new houses to view. This would alter the traditional character of a group of dwellings which is dominated by

converted old farm buildings. The new hedge would take considerable time to grow to the maturity of the existing one.

12. I therefore do not accept that the existing hedge should be removed. However, access to the front doors of each of the houses numbered 2 and 3 requires the hedge to be penetrated by a footpath and a pedestrian gate to be installed. I shall vary the condition to provide for this.

Condition 6

13. Condition 6 is as follows:-

(6) Prior to first occupation of the first house, the road improvement works as identified on the attached plan prepare by TEC Services and dated 05.06.2013 shall be provided by the developer on the public road, between the site and the village of Evanton. The specification of the works shall be agreed in advance with TEC Services and all works shall be completed to the full satisfaction of TEC Services prior to occupation of the first house.

Reason: In order to ensure that the public road access is improved to help accommodate the additional traffic generated by the development hereby approved.

14. The appellant requests the deletion of the condition on account of its being unnecessary. His main points are:-

- When consulted on the planning application, the planning authority's highway engineer (TEC Services) made no request for the provision of passing places.
- Because of the objections received, the planning authority (as advised by TEC Services) sought the provision of an additional passing place.
- Although the additional passing place was clearly not essential, the appellant reluctantly agreed to provide it.
- However, the Highland Council sought further road improvements, These are unnecessary.

15. The issue here is therefore whether the condition is necessary, as in condition 3 above.

16. The planning authority explains that the North Planning Applications Committee deferred consideration of the application on account of their concerns about the adequacy of the existing road. Following a site inspection, they concluded that improvements should be carried out to three passing places. This involved minor widening of one passing place and the surfacing of two existing informal passing places. It is suggested that although the appellant has carried out road improvements in connection with previous developments, given the number of dwellings involved, these improvements are comparatively modest. It is contended that the condition is therefore necessary and proportionate.

17. I accept that it is important that the road, particularly as regards passing places, should be improved to keep abreast of the increase in traffic generated by further

development. I appreciate the concerns of the Committee, the Kiltearn Community Council and other objectors. However, having seen the existing provision on the lane to Swordale and bearing in mind the advice given by TEC Services, I am not persuaded that the required improvements are necessary as a result of the proposed development. The provision of one additional passing place represents a proportionate requirement and a condition requiring this is necessary.

18. I therefore find that the condition as drafted is unnecessary, but that a condition requiring one additional passing place should be imposed.

Development Plan

19. The most relevant part of the development plan is the *Highland Wide Local Development Plan 2012*. Policy 28 promotes the provision of public services, including roads, which enhance the wellbeing of the people of Highland. This is relevant to conditions 2 and 6. Policy 29 requires new development to make a positive contribution to the visual quality of the place in which it is located and to demonstrate sensitivity and respect to its local distinctiveness. This relates to conditions 1 and 4.

20. My consideration of this appeal has taken account of these policies and I am satisfied that my decisions are in accordance with them. I have also taken account of the Council's supplementary planning policy guidance (*Sustainable Design Guide and Housing in the Countryside and Siting and Design*) together with the Scottish Government's *Scottish Planning Policy*. There is nothing in these documents which causes me to change my decisions. This applies also to all other matters raised.

Conditions Circular

21. Circular 4/1998 (The Use of Conditions in Planning Permissions, Annex A, paragraph 12) sets out six tests for conditions. I have applied these to the conditions the subject of this appeal and am satisfied that the conditions comply with the tests.

Donald Harris

Reporter