

THE HIGHLAND COUNCIL

**SOUTH PLANNING APPLICATIONS COMMITTEE
25 June 2013**

Agenda Item	5.4
Report No	PLS/036/13

**13/01279/PIP : Jake Mitchell
Land 361 metres north west of Wester Hardmuir**

Report by Area Planning Manager - South

SUMMARY

Description : Planning permission in principle for new dwelling

Recommendation: REFUSE

Ward : 19 - Nairn

Development category : Local development

Pre-determination hearing: Not required

Reason referred to Committee: Committee referral requested by a majority of local Ward Members.

1. PROPOSAL

- 1.1 Erection of a house in principle.
- 1.2 There was no pre-application consultation with the Planning Service, such consultation not being mandatory for local developments, but it is understood that the applicant sought pre-application advice on three alternative sites (including the application site) from Transport Scotland.
- 1.3 Access to the plot would be from the adjacent private road leading from the A96 to the two houses at Muirend approximately 400 m to the north. Waste water treatment would have to be by private means. A connection to the public water supply is feasible subject to Scottish Water approval.
- 1.4 A supporting document submitted with the application argues that a house is essential for the management of the farm (Wester Hardmuir) in the owners' absence and that alternatives are either unaffordable or inconvenient. Details of the extent of the owners' absence and the degree of inconvenience are expanded upon in a response to the case officer's queries.
- 1.5 No variations have been made to the proposals since the application was submitted.

2. SITE DESCRIPTION

- 2.1 The site is triangular shaped and straddles a change in ground levels, part being at the level of the road and the remainder at the lower level of one of the farm's fields, one corner of which the plot would occupy. It is set about 150 metres north of the A96 and separated from it by areas of woodland, which together with changes in landform help screen the site from view from most directions to which there is general public access. As the development description indicates it lies some distance from the existing farm house and steadings/farm shop buildings although the applicant states that this would not be an impediment to effective security. To the west, separated from the site by a field, are two houses adjacent to the minor public road to Penick.

3. PLANNING HISTORY

- 3.1 None

4. PUBLIC PARTICIPATION

- 4.1 Advertised : Unknown Neighbour. Expiry date 7/5/13
Representation deadline : 7/5/13
Timeous representations : 0
Late representations : 0

5. CONSULTATIONS

- 5.1 **Transport Scotland:** No objection. Conditions advised.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland-wide Local Development Plan 2012

28 Sustainable Design

35 Housing in the Countryside (Hinterland Areas)

6.2 Nairnshire Local Plan 2000

No relevant Policies remain in force

7. OTHER MATERIAL CONSIDERATIONS

7.1 Highland Council Supplementary Planning Policy Guidance

Housing in the Countryside Siting and Design Supplementary Guidance (SG)

7.2 Scottish Government Planning Policy and Guidance

SPP

8. PLANNING APPRAISAL

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

8.3 Development Plan Policy Assessment

As the site is in Hinterland as defined in HwLDP the key consideration of principle is whether a house is justified in terms of any of the exceptions set out in HwLDP and related Supplementary Guidance. The sole possible exception in HwLDP 35 is “housing essential in association with an existing rural business”. The supporting information is not as fully quantified (e.g. in terms of person-hours) as the SG requires nor has it been prepared independently, nevertheless the important thing is whether the evidence demonstrates that a house is “essential”. The applicants’ role would be a combination of managerial/supervisory and general work at various times and over various periods of time, but on the basis of the information provided the owners’ absences for periods longer than a couple of days do not appear to add up to more than 2 – 3 months in the year. The present arrangements whereby the applicants move in to the owners’ house involve inconvenience and some disruption to family routine, but that falls short of justifying a separate house, occupied all year round, as “essential”. The need is more comparable to accommodation for a seasonal worker albeit the “season” in this case is not necessarily a single continuous period of time.

8.4 Material Considerations

Although the site is reasonably well set into the landscape it is arguable that on landscape and operational grounds a site associated with the existing cluster of buildings at the farm would be more appropriate. The applicants seek to rely on Transport Scotland’s pre-application advice as favouring the proposed site as opposed to one at the farm. The advice is not so clear cut and in fact the junction into the farm was described as “reasonably acceptable (although additional uses of this access and the parking on the access road make this less desirable)”. The junction leading to the application site was described as being “substandard” in layout and visibility in one direction and “requiring significant work to make it acceptable”. Transport Scotland’s preference was in point of fact for a third site near Easter Hardmuir which would have taken access to the Trunk Road via an existing junction with a minor public road. Transport Scotland can only give formal advice in relation to the application submitted and have advised conditions which would have to be imposed in the event that permission were to be granted.

Another issue which would arise in the event of permission being granted is

occupancy/sale restrictions. Whilst Government Policy discourages the use of section 75 Agreements to restrict occupancy or sale they are a requirement of the SG both for “agricultural” need and “rural business” need cases. The applicants are reluctant to enter into such an Agreement and indeed the terms of an Agreement would be complicated by the fact that the intention is that the applicants buy the plot from the farm owners. A less onerous alternative would be an occupancy condition. In either case (Agreement or condition) the restriction would have to meet the “reasonableness” test of the relevant Government Circulars. It is doubtful if such a restriction could be defended as reasonable given the inadequacy of the case for a house as being “essential”.

8.5 **Matters to be secured by Section 75 Agreement**

For the reasons indicated above a Section 75 Agreement is not considered applicable.

9. **CONCLUSION**

9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

It is recommended that permission be refused.

10. **RECOMMENDATION**

Action required before decision issued

Notification to Scottish Ministers	No
Notification to Historic Scotland	No
Conclusion of Section 75 Agreement	No
Revocation of previous permission	No

Subject to the above, it is recommended the application be **REFUSED** for the following reason:

1. The site is located in Hinterland where Policy 35 of the Highland-wide Local Development Plan presumes against the development of housing in open countryside except where (inter alia) such housing is essential in association with an existing or new rural business. The evidence presented in support of the application fails to demonstrate that a new house is essential for the operation or development of the rural business at Wester Hardmuir Fruit Farm

Signature: Allan J Todd
Designation: Area Planning Manager – South
Case Officer: Andrew McCracken

Background Papers: Highland-wide Local Development Plan

Relevant Plans: Plan 1: 000001 – Site and Location plan