



## SCOTTISH EXECUTIVE

Development Department  
Inquiry Reporters Unit

4 The Courtyard, Callendar Business Park  
Callendar Road, FALKIRK FK1 1XR

John Rhodes  
"Arch Cottage"  
Main Street  
LAIRG  
Sutherland  
IV27 4DD

DX 557005 FALKIRK

Telephone: 01324 696 451

Fax: 01324 696 444

[http://www.scotland.gov.uk/planning\\_appeals/seiru](http://www.scotland.gov.uk/planning_appeals/seiru)

Our ref: P/PPA/270/457

5 June 2007

Dear Sir

### **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4**

### **PLANNING APPEAL: ERECTION OF DWELLINGHOUSE AT PLOT 6, EIDEN, ROGART, SUTHERLAND**

1. I refer to your appeal, which I have been appointed to determine, against the refusal of outline planning permission by the Highland Council for the above development. I have considered the written submissions and made an unaccompanied inspection of the appeal site and the surrounding area on 9 May 2007. For the reasons given below, I have decided to dismiss the appeal.
2. The appeal site, which is rectangular in shape and extends to approximately 1,570m<sup>2</sup>, lies on a north east hill slope facing towards the River Fleet, approximately 1.2km from the auction mart site at Pittentrail, Rogart. It is grassed land and access is by way of a single track with passing places public road leading from Rogart to the farmhouse and steading at Eiden.
3. The application, which is in outline, concerns the erection of a house on the site, connection to a communal foul drainage system, and the formation of a new vehicular access. There are no indicative drawings, merely a block plan and location plan.
4. Planning permission was refused for the following reasons: -
  1. The proposal does not accord with structure plan policy G2 - Design for Sustainability as it is incompatible with foul drainage service provision, connecting to an illegal septic tank with discharge to the River Fleet, and would therefore have a significantly detrimental impact on both individual and community residential amenity.
  2. Approval of the proposal would set a dangerous precedent making it difficult to refuse similar proposals in the future.

5. **In response to notification**, there were no objections lodged to the application. **In response to consultation**, SEPA objected to the application on the basis that the communal drainage system to which the proposed house is to be connected is illegal as it does not conform to the system originally approved and the consent granted for discharge to the River Fleet. There would be no objection to a separate septic tank with discharge to a land soakaway.

### **Summary of the Case for the Appellant**

6. In support of your appeal, it is submitted that the second reason for refusal is difficult to comprehend, given that there are already 3 houses served by the existing foul drainage system to which you wish to connect the proposed house. Approval of the application cannot be regarded as setting a dangerous precedent.

7. Reference is made to the grant of planning permission in May 1998 for the erection of a new house on the appeal site. On purchasing, you were at liberty, prior to the lapse of that permission, to construct the house in accordance with the 1998 permission and connect to the communal foul drainage system. Had you done so, the current situation would not have arisen.

8. You would not have purchased the appeal site, had it not have the benefit of planning permission. The site was sold as having full planning permission and you were of the view that the appeal application should simply have been a "rubber stamping" exercise. The 1998 planning permission not only influenced your decision to purchase but also the purchase price. Your architect advised you that connection to the existing foul drainage would save the considerable expense involved in installing a separate septic tank and soakaway.

9. You have explored in detail the possibility of a separate foul drainage system. Unfortunately, access from the public road to the appeal site precludes the possibility of bringing in the digging machines necessary to carry out the percolation tests required for the system. The owner of the land on the north and west boundaries of the appeal site has refused permission for access for the machines across his land, taking the view that connection to the existing system already used by 3 houses is the obvious way forward. The eastern boundary is also unsuitable as it is bounded by the farm and there is a nearby electricity pylon.

10. The planning authority has indicated that the existing communal system was not installed in accordance with the approved plans. If this is the case, you raise the following questions: -

- why did the relevant inspecting authority approve its installation in the first place
- why were the 3 houses given planning permission to connect to the system
- why were the previous owners of the appeal site given planning permission to connect to the system

11. Finally, you suggest that there may be an underlying motive behind the decision to refuse the application and consider that you are being discriminated against.

## Summary of the Case for the Council

12. The council submits that the 1998 planning permission for a house on the appeal site was never implemented and lapsed after the statutory 5 year time limit. The appeal application was submitted in July 2005, over 2 years after the original permission lapsed. Between 1998 and 2005, the technical standards applicable have changed significantly and the statutory consultees assessed the appeal application on the basis of current standards.

13. While the council notes the difficulties in relation to access for digging machines to carry out the necessary percolation tests, this is not a material planning consideration in land use planning terms but a private matter for the parties involved.

14. Reference is made to the committee report on the appeal application which elaborates on the existing foul drainage system. The system connects to a **private septic tank**. The tank has been in use for a number of years and was originally built to serve up to 9 houses. SEPA has indicated that Consent to Discharge has been granted for the discharge of treated sewage effluent to the River Fleet from a **biological treatment tank** serving 9 houses. There is no Consent to Discharge from a **septic tank**.

15. SEPA regards the existing foul drainage system to be illegal and has indicated that you would be partly liable for an illegal discharge if you were to make the proposed connection. In addition, you might also incur legal costs and costs associated with any improvements required to the existing system or its complete replacement.

16. Both the council and SEPA have suggested a separate foul drainage system for the appeal site as a way forward. You have indicated however that you wish to connect to the existing system. In response to the questions raised in paragraph 10 above, the council highlights the marked change in legislative requirements relating to pollution and discharges in recent years. While you may feel aggrieved at not being able to connect to the existing system, it would not be appropriate for the council to approve a connection to an illegal system. For this reason, the appeal proposal fails policy G2 of the HSP.

## CONCLUSIONS

17. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. I consider, based on my inspection of the appeal site and the written submissions, that the issues to be determined are whether the proposal is consistent with the relevant provisions of the development plan and, if not, whether an exception to these provisions is justified by other material considerations. Material considerations in this appeal include the consultation responses and the submissions of the parties.

18. The development plan comprises the HSP, approved in 2001, and the Golspie and Lairg Local Plan (G&LLP), adopted in 1983. As regards the HSP, policy G2 relates to Design for Sustainability, setting out 13 criteria against which development proposals are to be assessed. The first criterion assesses proposals on the extent to which they are compatible with service provision (water and sewerage, drainage, roads, schools, electricity). Developments judged to be significantly detrimental shall not accord with the structure plan.

19. Policy H3 of the HSP relates to Housing in the Countryside, indicating that housing development will generally be within existing and planned new settlements. Outwith the hinterland of towns, development of new housing of an appropriate location, scale, design and materials may be acceptable, particularly to support population and services. Preferred locations would be settlements identified in local plans. Outwith these settlements, proposals will be assessed against relevant local plan policies and in particular the extent to which they support the viability of the wider rural area, are appropriate in terms of scale, location, design, and comply with policy G&LLP does not allocate the appeal site for any specific use, proposals being assessed on individual merits.

20. Assessing the appeal proposal against these policies, the appeal site has previously had the benefit of planning permission for a new house and I do not consider the principle of a house on the site to be an issue. The appeal centres on the consultation responses from SEPA, which clearly indicate that the existing foul drainage system does not meet the legislative requirement and does not comply with the Consent to Discharge. The views of statutory consultees are material planning considerations and SEPA's concerns reflect significant detriment in terms of compatibility with sewerage service provision. I conclude that the appeal proposal is inconsistent with policy G2 of the HSP. The appeal proposal is therefore inconsistent with the provisions of the development plan and I now require to consider whether there are nonetheless other material considerations to warrant an exceptional grant of outline planning permission.


21. As regards material considerations, while I have some sympathy for the position you now find yourself in with regard to the appeal site, the fact remains that the 1998 planning permission was never implemented. In the interval, the planning permission lapsed, legislative requirements changed and the appeal application requires to be assessed on current standards. It may be that you may have some legal redress against the parties from whom you purchased the site if there was misrepresentation on its planning status. Again, you may come to an arrangement with the adjacent land owner on the question of access for the digging machines to allow a separate foul drainage system to be installed. I am unable to comment on your suggestions of an ulterior motive and discrimination. In all the circumstances, I conclude that there are no material considerations to justify an exceptional grant of outline planning permission.

22. I have taken account of all the other matters raised but find none that outweighs the considerations on which my decision is based. Accordingly, in exercise of the powers delegated to me, I hereby dismiss your appeal and refuse to grant outline planning permission in respect of application (council ref: 05/00259/OUTSU), registered on 15 July 2005.

23. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

24. A copy of this letter has been sent to the Highland Council.

Yours faithfully

A handwritten signature in cursive script that reads "Donald A Watt".

DONALD A WATT  
Reporter