



SCOTTISH EXECUTIVE

Development Department
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5 June 2007

Douglas J A Reid
"Crannach"
Lamington
Ross-shire
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PG

Dear Sir

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4
PLANNING APPEAL: ERECTION OF 3 DWELLINGHOUSE AND GARAGES TO THE SOUTH OF "CRANNACH", LAMINGTON, ROSS-SHIRE**

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 8 May 2007. For the reasons given below, I have decided to dismiss the appeal.
2. The appeal site, which is broadly rectangular in shape and extends to approximately 6,000m², lies immediately to the east of a recently completed development of 4 houses on the eastern side of the minor road from Scotsburn to Kildary, about 150m south of its junction with the minor road from Scotsburn to Tain at Lamington, Ross-shire. The site is predominantly woodland and is the subject of a Tree Preservation Order (TPO).
3. The application, which is in outline, concerns the erection of 3 houses and garages on the site. There are no indicative drawings, merely a block plan and location plan. Access would be taken by way of an extension of the road serving the recently completed housing development, with a roundabout at the north east end serving the 3 plots and an area to be retained as woodland along part of the south east boundary. A subsequent application, seeking to amend the appeal application by reducing the number of houses and garages from 3 to 2, has been formally withdrawn.
4. Planning permission was refused for the following reasons: -
 1. The proposal would result in an unacceptable loss of an area of predominantly birch woodland to the detriment of the amenity of the area.

2. The developer has not demonstrated that the site can be serviced by an access to adoptive standards, as required by policy H8 of the Highland Structure Plan (HSP).

5. **In response to notification**, there were 5 objections from local residents based on a number of issues including the development not respecting the existing pattern of development in the area, the loss of woodland and its habitat, loss of privacy, urbanisation, increased traffic, and drainage capacity. **In response to consultation**, the Roads Department had no objections, subject to the access road being brought up to adoptive standards.

Summary of the Case for the Appellant

6. In support of your appeal, you narrate the planning history of your property interests in Lamington from your arrival there in the mid 1970s. You purchased about 8 acres in all in 3 lots and in 1975 discovered that your entire property holding had been designated for a Lamington Village Development in the draft Easter Ross Local Plan which was later adopted as the Ross and Cromarty East Local Plan in 1975. In 1982, you commenced development on your 4 acre site at Crannach by gaining planning permission for a garden centre, with sales and parking areas, accessed from the Scotsburn/Tain road. This entailed the felling of some trees. You then sold the triangular area of land between Crannach and the Kildary road with outline planning permission for 2 houses. Later, you sold a plot immediately to the south of the triangular area for housing and again there was no difficulty in obtaining planning permission, despite the need for tree felling along the side of the Kildary road. In 2004, planning permission was granted for a further 3 houses which have recently been completed by a developer to the south and east of the house plot on Kildary Road and which you describe as phase 1, with the appeal site as phase 2.

7. At no time were you advised that the housing allocation had been altered. You were aware of the requirement for a linear form of development along the Scotsburn/Tain road and of the council's requirement to leave a fringe of trees around the plots. The council nevertheless allowed the developer of phase 1 to cut down trees, including noble firs, at the front of and between the 2 houses on the south boundary.

8. You express concern at representatives of the council taking unauthorised access to your property to carry out a tree survey. It appears that the officers concerned approached the developers of phase 1 and not yourself as owner. You also question the accuracy of the findings of the survey. The appeal site has been used solely by your family and the "desire lines" result from that use and not from "informal use by walkers". The appeal site has been protected by a locked gate for many years. You also disagree with the description of the trees in phase 1 as "a commercial crop reaching maturity". The trees were of mixed coniferous species including scots pine, larch, Sitka spruce, with a few noble fir and Douglas fir of no commercial value and nowhere reaching maturity.

9. In May 2006, you lodged the appeal application, paying the appropriate fee. You were not advised of any change in the planning status of the appeal site. In June 2006, you were then served with a temporary TPO in respect of the appeal site. You question paragraph 3 of the committee report which states that it is standard practice to consult the council's Forestry Officer in respect of applications affecting trees. No consultation was held with you.

10. Turning to paragraph 5 of the committee report, you express surprise at the requirement to build 2 passing places on the Kildary/Scotsburn road. No passing place on this road meets the specification required. You also refer to a meeting on site in November 2006 with an officer from

the Roads Department where it was agreed that there would be no problem in bringing the road through phase 1 up to adoptive standard, with the road to phase 2 being a rustic/private road.

11. In relation to the second reason for refusal, you refer to earlier discussions with council officers in regard to the road through phase 1 being brought up to the adoptive standard. You had pointed out that there was no street lighting on Kildary road or on the Scotsburn/Tain road and that the specification for such lighting represented "overkill". It was your understanding that the officer had agreed that there would be no such requirement for phase 1. You then describe further meetings with council officers in November/December 2006 when the possibility of reducing the number of houses to 2 and the minimum acceptable requirements to bring the access road for both phases to an adoptable standard were discussed. You refer to a recent planning application where the council waived the requirement to bring an access to the adoptive standard.

12. In direct response to the council's submissions, you refer to the anniversary of the appeal submission and the expiry of the period for a waiver of the fee for another planning application. You also refer to the meeting in December 2006 when a reduction from 3 houses to 2 was discussed in the context of addressing amenity concerns. You then comment in detail on the responses given by the council in the appeal questionnaire, re-iterating many of the issues raised in your original appeal statement. You have been unable to obtain from the council details of the original designation of Lamington Village and believe the information may be being deliberately withheld. You do not accept that it cannot be found. Reference is made to the discrepancy in the first reason for refusal as set out in the decision notice and the text of the reason as quoted in a committee report on the TPO, which contains a reference to policy G2 of the HSP. Finally, you summarise your case, indicating that the driving force has been the government's apparent intention to change tax laws in respect of property in excess of 2 acres and your desire to protect your interests.

Summary of the Case for the Council

13. The council adopts the appeal questionnaire and the committee report on the appeal application as its principal submissions in this appeal. The report gives a lengthy discussion on the statement which you lodged in support of the application, the objections lodged, and the consultation responses.

14. As regards the development plan, policies G1 - Conformity with Strategy and G2 - Design for Sustainability of the HSP and policies in the Easter Ross Local Plan and the Ross and Cromarty East Local Plan (Deposit Draft with Modifications) are cited as relevant. Under both local plans, the site is within the Lamington/Scotsburn settlement boundary where small groups of houses will generally be acceptable subject to satisfactory private drainage arrangements and the use of shared accesses where feasible.

15. Reference is made to the consultation response received from the Roads Department. Although that department had no objections in principle, the existing access through phase 1 to serve the appeal site would require to be brought up to the adoptive standard. Fitting a road to the required standard could be problematic in that it would require land from the first plot on the left when entering phase 1 from Kildary road and modification to the accesses of the 3 houses under construction. The first 5m of each drive would require to be surfaced. As part of any application for construction consent, consideration of the need for service bays might be necessary. There would also be a requirement for 2 passing places on Kildary road close to the site.

16. The report concludes that, while the site is within the settlement boundary, it is currently an area of woodland. The woodland is predominantly birch with rowan, scots pine and other species and a number of desire lines which the council contends demonstrates a good level of informal use by walkers. This site differs from phase 1, where there was a commercial crop of woodland reaching maturity and requiring felling. An emergency TPO has been made in respect of the appeal site, as the woodland makes a significant contribution to the amenity of the area.

17. The report recommends refusal of the application for the following reason: -

The proposal is contrary to the provisions of the HSP policy G2 - Design for Sustainability in that it fails to demonstrate sensitive siting in keeping with the local character and the natural environment, since the proposal would result in an unacceptable loss of an area of predominantly birch woodland to the detriment of the amenity of the area.

18. The Minute of Meeting of the council which determined the application accepted the recommendation with the addition of the second reason for refusal relating to the access. It is unclear from the submissions why the full text of the first reason as it appeared in the recommendation did not appear on the decision notice.

CONCLUSIONS

19. 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 concerns of the objectors, the consultation responses, and the submissions of the parties.

20. The development plan comprises the HSP, approved in 2001, and the Ross and Cromarty East Local Plan(R&CELP), adopted in February 2007. As regards the HSP, policy G2 relates to Design for Sustainability and sets out 13 criteria against which development proposal are to be assessed. These include impact on individual and community residential amenity and impact on resources such as habitats, species, landscape and scenery. Another requires sensitive siting and high quality design in keeping with the local character and historic and natural environment. As regards the R&CELP, the site is shown within the settlement boundary of Scotsburn. The text of the local plan indicates that there has been substantial housing development over the last decade, mainly on the south side of the Scotsburn/Tain road, with there now being significant servicing problems especially in relation to waste disposal. Potential for further infill is subject to satisfactory drainage arrangements and the use of shared access points, where feasible.

21. Assessing the appeal proposal against these policies, the appeal site is an attractive area of long established woodland, which forms a backdrop to the nearby houses. It no doubt serves as a wild life habitat and is now the subject of a TPO. While it lies within the settlement boundary, that does not mean that it has been allocated for housing. Housing development of the site in my view would not be in keeping with the requirement for sensitive siting. The settlement boundary at Scotsburn is linear in form and the proposal would be out of character with that form, representing to some extent a form of backland development. In addition, there would be adverse impacts on

individual and community residential amenity and on the habitat, landscape, and scenery. 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.

22. As regards material considerations, the submissions appear to reflect a fundamental misunderstanding of the planning status of the appeal site in that you appear to believe that the site is part of a housing allocation. Given my conclusions in respect of the development plan, it is unnecessary to comment on the disputes concerning the tree survey and the requirements of the Roads Department, save to say that there is a TPO in force and that the requirements in respect of the access appear to involve land belonging to other parties. Having reviewed the submissions at length, I conclude that there are no material considerations to justify an exceptional grant of outline planning permission.

23. 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: 06/00482/OUTRC), registered on 18 May 2006.

24. 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.

25. Copies of this letter have been sent to the Highland Council and the objectors.

Yours faithfully

This was the version issued to parties on 5 June 2007

DONALD A WATT
Reporter