

Appeal Decision Notice

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



Decision by G Michael M Thomson, an Inquiry Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/270/604
- Site address: Site 1, Land East of Windhaven, Brough, Thurso KW14 8YE
- Appeal by Caledonian Iberian ConeXions (UK) Limited against the decision by the Highland Council
- Application for planning permission (council reference: 08/00439/FULCA) dated 18 September 2008, refused by notice dated 10 March 2009
- The development proposed: Erection of timber chalet for use as holiday let, installation of septic tank and soakaway, and formation of vehicular access
- Date of site visit by Reporter: 19 May 2009

Date of appeal decision: 2 June 2009

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. The appeal site is an elongated area of around 1.9ha of level cliff-top meadow, together with the steeply sloping grassy land leading down to the high water mark of the sea. A public footpath runs through this latter ground, rising to become a cliff-top path adjacent to the site. The proposal is to erect a timber chalet some 200m into the meadow, with an access road leading from the line of houses which forms the village of Brough. The chalet would be positioned to lie marginally closer to the village than a large two-storey property to be known as Burifa, which is currently under construction on an adjacent site to the south. The main issues to be determined in the appeal are whether the proposal would accord with the policies of the development plan; or whether there are any material considerations which would outweigh any conclusions reached on this basis.

2. In its reasons for refusal, the council claims that the chalet would conflict with two policies of the Highland Structure Plan, namely G2: Design for Sustainability and T3: Self-Catering Tourist Accommodation. However, Policy PP2: New Housing Development of the Caithness Local Plan is also relevant; this policy favours development, unless it would significantly affect important features. The proposal is for a standard two-bedroom, log

cabin style house to be erected only 30m from the cliff edge. The cliffs, and especially the cliff-top meadow which forms the appeal site are important to the village, in that they are prominent in views from the north, in particular those obtained from the Dunnet Head Road approaching the village. Accordingly, there can be little doubt that the proposal would appear in views towards the sea, and because of the style of the building and materials to be used, it would be to the detriment of this part of the village.

3. Structure plan Policy G2 states that developments will be assessed upon a number of criteria, one of which is the extent to which the development makes use of brown field land, existing buildings and recycled materials. The site is green field and does not therefore meet this criterion. The council also claims that the proposal further conflicts with this policy in its lack of sensitive siting or quality design, as already referred to (above).

4. As to Policy T3, the council claims overdevelopment of the site. As the policy requires separation of holiday accommodation to be 150m minimum, the proposal to erect this structure 200m into the site would separate it from the village, and as according to the site plan, Burifa lies about 150m to the south-east, this requirement would appear to be met.

5. At the same time, there is concern over coastal erosion, and that the north edge of the site may be affected to some extent. It is noted that there is a requirement that a 2m strip be maintained as a public footpath and it cannot be satisfactory that the footpath may be required to climb over and around areas that have slipped to join the coastal slope, as happens at present. While there is no obvious solution to this problem – land to allow a 10m batter has been suggested – the reference to overdevelopment in this case might also therefore be taken to apply to the restriction of this footpath to the very edge of the cliff.

6. Be that as it may, for the reasons set out, the application for this ch  let is contrary to development plan policy. However, the appellant has raised a number of relevant issues. The first is the appearance of and potential precedent created by Burifa, the large timber structure being erected to the south-east of the site. This building is out of character with its surroundings; it dominates the area around it; and is at odds with the quality of the existing environment of Brough. Indeed, reference is also made to consent for a further 10-ch  let development to the west of the village. Such developments are inconsistent with the character of the village and with the submissions of the council in this regard. However, to treat either of them as a precedent justifying the appeal proposal could lead to further unsuitable development in the area, harming the nature of the surroundings still further.

7. The appellant company has also referred to a number of administrative matters arising in connection with the council's handling of its application. However, the appeal relates to the council's decision dated 10 March 2009 and if the appellant wishes to pursue these complaints, there are other more appropriate routes to follow. The concurrent claim for an award of expenses is a matter dealt with in a separate decision.

8. A number of other matters have been raised in connection with the appeal. For example, the concept of the proposed log cabin screening Burifa from the road; or in turn being screened by Burifa from the village. This simply would not happen; instead, the two

buildings would appear in many of the same viewpoints, including that from the Dunnet Head Road, thereby exacerbating the level of intrusion. The potential benefits to tourism and the promotion of economic and community development are also raised in the appellants' submissions, and although these may be benefits emanating from a successful development, it is essential first to ensure that fundamental matters such as siting and design meet the standards set out in the development plan; those of this appeal proposal do not.

9. Although these, and all the other matters raised have been taken into account, they do not affect the conclusion that the proposal would be contrary to development plan policy and that there are no material considerations which would indicate otherwise.

This is a true and certified copy of the decision issued on 2 June 2009.

G M M Thomson
Inquiry Reporter

Decision by G Michael M Thomson, an Inquiry Reporter appointed by the Scottish Ministers

- Appeal reference: P/EXP/270/604
- Site address: Site 1, Land East of Windhaven, Brough, Thurso KW14 8YE
- Claim for expenses by Caledonian Iberian ConeXions (UK) Limited against the Highland Council

Date of decision: 2 June 2009

Decision

I find that the council has not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. The claim was made at the appropriate stage of the proceedings, prior to the completion of the written submissions of parties.
2. The claim is based by the applicant upon the pre-application administration of the planning submissions; on the advice given by the council to the applicant being misleading; and by its inviting the submission of a planning application, which resulted in the applicant incurring costs in submitting plans, carrying out percolation tests on the site, etc. without gaining a planning permission.
3. The council responds to these and other issues, confirming that pre-application discussions are always without prejudice to the recommendations made or the council's decision. In any case, at an early stage in the proceedings, it is not possible to assess whether an application is likely to be successful or not. The assessment ultimately made by the council of the proposal has provided a reasoned justification for its refusal.
3. As already stated in the decision, the appellant complains about a number of administrative procedures adopted by the council during the process leading up to the determination of the planning application. If the appellant wishes to pursue these complaints, there are other more appropriate routes to follow than the planning appeal process.

4. As to the other matters raised, although the applicant, now the appellant, insists that the council's advice was not given on a "without prejudice" basis, planning officials' advice is not binding on members of the council, who make the decision on a planning application. In the same way, officials' advice, as given in this case to the applicant, is not binding on members of the public (ie the applicant company did not have to lodge an application merely because this was officials' advice, but it made the decision to do so itself). There is therefore no justification in the claim for expenses in this case.

This is a true and certified copy of the decision issued on 2 June 2009.

G M M Thomson
Inquiry Reporter