

THE HIGHLAND COUNCIL

Agenda Item	3.3
Report No	PLC/054/10

CAITHNESS, SUTHERLAND & EASTER ROSS PLANNING APPLICATIONS COMMITTEE – 21 December 2010

09/00511/FULSU : Mrs H Cook
The Old Orchard, Skiach, Evanton

Report by Area Planning and Building Standards Manager

SUMMARY

Description: Removal of condition (2) attached to Permission 04/00460/OUTRC and condition (1) attached to Permission 07/00576/REMRC

Recommendation - REFUSE

Ward : 07 – Cromarty Firth

Development category : Local development

Pre-determination hearing : Not required.

Reason referred to Committee : Original Planning Permission granted by Committee/Enforcement

1. PROPOSED DEVELOPMENT

- 1.1 The application is for the removal of a planning condition attached to the original Outline Planning Permission and the Reserved Matters granted for the erection of the house now known as The Orchard to the north-west of the River Sgitheach in Evanton.
- 1.2 Outline Planning Permission was granted to a Mr Hector Campbell for the erection of a house within the garden ground of Braegowan by the former Area Planning Committee in December 2004. The application was recommended for Refusal by officers for the reason that the development would bring to more than four the number of properties served by an unadopted private lane and that the applicant had failed to demonstrate that he had sufficient control to upgrade the road to adoptive standards (Contrary to Structure Plan Policy H8).
- 1.3 Committee decided to approve the development but only on the basis that access to Braegowan was taken solely from Hill Terrace to the north and not taken along the private track serving the house plot; that a common turning area be provided for that plot and other users of the track; and that the applicant share in the costs of maintenance of the road. The applicant confirmed his agreement to this and conditions were therefore attached to the Outline Permission reflecting this. Specifically, Condition 2 states that 'The Reserved Matters....shall include provision of a common turning area within the site and details for shared maintenance of the access roadway, to be carried out to the satisfaction of the Planning Authority prior to occupation of the house hereby approved.'

- 1.4 When an application for Approval of Reserved Matters was initially received from Mr and Mrs Cook in May 2007, the layout plan did not show the turning area. However, after highlighting this with the agent, an amended plan was submitted which included this. The application was subsequently approved under delegated powers and Condition 1 states that 'Prior to the house being first occupied, the parking and turning area within the house curtilage shall be formed as shown on the approved plan and the common turning area shall be formed outwith the site and made available for all users of the existing access track. Any gate shall be set back behind this common turning area and shall open inwards. The works shall be implemented at the developer's expense and maintained to the full satisfaction of the Planning Authority.'
- 1.5 The house is now built and occupied and although not laid out exactly as shown on the approved plans, until recently the open access into the site has been available for vehicle turning. Since the application was lodged last year, boulders have been placed by the applicants around the access to make any turning more difficult. The application seeks removal of the condition to allow the site to be fenced and gated.
- 1.6 The applicant's solicitors have submitted several letters in support of the application.

2. SITE DESCRIPTION

- 2.1 The Orchard is a detached one and a half storey house situated to the south of the property of Braegowan and to the immediate north-east of the property of Riverside, adjacent to the River Sgitheach in Evanton. Access is taken via a private track which runs along the north-west bank of the river and serves four other properties, three of which are further along the track and one (Kimberley Cottage) has its principal access from Hill Terrace to the north but has outbuildings served from the private track, immediately to the north-east of the application site.

3. PLANNING HISTORY

- 3.1 04/00460/OUTRC Erection of house – Outline Planning Permission granted 13.12.2004.
07/00576/REMRC Erection of house – Approval of Reserved Matters granted 27.09.2007.

4. PUBLIC PARTICIPATION

- 4.1 Advertised : Neighbour Notification
Representation deadline : 08.01.2010
1 timeous letter of objection has been received.
- 4.2 Material considerations raised are summarised as follows:
- Narrow, unsurfaced road extends to approximately 250m without any proper turning area and serves five properties
 - Without turning area some vehicles would require to reverse for a significant distance to detriment of safety
 - The need for a turning area to cope with increased traffic generated by house was apparent when permission was granted for this house
 - If applicant had not agreed to the condition of including the turning area it is questioned whether such original permission would have been granted.

4.3 The letter of representation can be viewed online www.highland.gov.uk, at the Area Planning Office in Dingwall and for Councillors, will be available for inspection immediately prior to the Committee Meeting.

5. CONSULTATIONS

5.1 **Kiltearn Community Council** : The Community Council originally objected to the application (in February 2010) on the following grounds:

- Loss of amenity which will result as this is the only proper turning area on a narrow road.

In September 2010 the Community Council advised that they wished to **withdraw their objection**. No reason was given.

5.2 **Access Officer**: No objections. The removal of the planning condition would not affect access for the general public.

5.3 **TECS (Transport)**: No objections. Not on public road.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Structure Plan 2001

G1	Conformity with strategy
G2	Design for sustainability
H8	Access arrangements for new and existing development

6.2 Ross & Cromarty East Local Plan

16 Evanton	Within Settlement boundary – existing housing
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7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable

7.2 Highland Council Supplementary Planning Policy Guidance

Not applicable

7.3 Scottish Government Planning Policy and Guidance

Scottish Planning Policy

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**

The relevant policy taken into consideration when the application was originally approved is H8 which states that where development proposals involve new or improved access to serve more than four houses (or equivalent traffic generation) then the private road should be brought up to the adoptive standards of the Council. The original permission was therefore granted contrary to such policy. However, within General policies G1 and G2 there is a requirement that development shall be compatible with service provision and shall take into account impact on individual and community residential amenity. Whilst the original permission took account of such factors in ensuring that the access infrastructure was upgraded to reflect the impact of additional development, the proposal to remove this requirement runs contrary to these policies.

8.4 **Servicing**

The only servicing issue under consideration in this case is access. As adoption of the road to comply with Policy H8 was not feasible at the time of the original application, Committee attached a number of conditions relating to upgrading the private road, one of which was the provision of a turning area for all users of the road. The provision of the turning area was therefore fundamental to the decision to grant permission, contrary to officers' advice to refuse. The current householders bought the site and developed it in the knowledge of this condition being attached. Furthermore, the Reserved Matters submission was amended by the applicant to show this turning area and a condition attached to this Approval reinforced the need for this.

8.5 **Representations**

One letter of objection has been received from the owner of the property of Kimberley Cottage to the immediate north-east. The letter points out that the original permission was granted on the basis of the turning area being formed, given the increase in traffic that the house would generate on an unadopted track with no formal turning head. The concerns of the neighbour are acknowledged and reflect Committee's original decision.

8.6 In response, the applicant's solicitor has advised that the application to remove the requirement for the turning area has been generated by significant difficulties between his client and the immediate neighbour. It is submitted by the solicitor that the neighbour has been obstructive since development began on the house by erecting signs advising no access and using the open access and the garden of The Orchard to turn his car/horses/hearse/lorry/four wheeled drive at all times of day and night. He has also erected a gate across the private track between the two properties which is difficult to open.

8.7 The solicitor is claiming that the wording of the condition suggests that the turning area should be outwith his client's property and that his client would be willing to do this if the neighbour was happy to provide land, which he is not. He is suggesting that it is unreasonable to attach a condition that requires the turning area within his client's property and he is advising that it is not possible to create such turning area and that the condition is therefore unenforceable.

He points out that there is no need for the neighbour to use the track beyond his own property as he can turn within his own ground; that the other three houses further up the track all have their own turning areas; and that the house at the end of the track has been vacant for some considerable time.

8.8 Matters to be secured by Section 75 Agreement

Not applicable

9. CONCLUSION

The strained relationship between the applicant and her neighbour is acknowledged however any personal conflict between neighbours is not a material planning consideration.

9.1 In this case the requirement for the turning area as defined within the Outline Planning Permission was to be 'within the site'. The layout plan approved with the Reserved Matters clearly showed both a turning and parking area within the house curtilage and a common turning area outwith the curtilage but within the site as had been required at Outline stage.

9.2 This demonstrates clearly that provision of a turning area can be achieved outwith the curtilage and therefore it is difficult to understand the argument being put forward by the applicant's solicitor. The layout of the site at present does not reflect the approved layout, as a wide private parking and turning area has been formed measuring approximately 7.8m wide throat width x approximately 14m long. However, by reducing the private hard surfaced area to a standard hammer head design as approved, a separate common turning area measuring approximately 3m throat width x 6m long can be achieved to serve other track users. The private parking and turning area could then be fenced and gated as part of the applicant's garden and therefore not accessible by other traffic. Alternatively, the applicant owns land on the other side of the access track which could be used to create the turning area which would be equally acceptable.

9.3 Thus, in line with the Council's decision taken in 2004, it is considered essential that a turning area is retained for the benefit of all track users, given the narrow nature of the track, the number of properties using it and the current lack of any formal turning area. It is therefore recommended that the application is refused and the applicant given one month to remove or adjust the position of the boulders to reflect the original layout to allow turning to continue.

9.4 If the boulders, or any other obstructions erected which impinge on the turning area approved, are not removed within this timescale, Committee is asked to agree to an Enforcement Notice being served to secure compliance with the original conditions.

10. RECOMMENDATION

Action required before decision issued	N
Notification to Scottish Ministers	N
Notification to Historic Scotland	N
Section 75 Agreement	N

