

## Appeal Decision Notice

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Decision by Michael Shiel, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2053
- Site address: Land west of Evelix Cottage, Scotsburn, Lamington, near Tain
- Appeal by Galliford Try Construction against the decision by The Highland Council.
- Application for planning permission no. 10/03006/FUL, dated 9 July 2010, refused by notice dated 21 March 2011.
- The development proposed: The erection of three dwellinghouses with associated access and services.
- Date of site visit by Reporter: 2 August 2011

Date of appeal decision: 12 September 2011

### Decision

I dismiss the appeal and refuse planning permission.

I have issued a separate decision notice on the appellant's claim for an award of expenses.

### Reasoning

1. The determining issues in this appeal are: (a) whether the proposal complies with the relevant provisions of the development plan; and (b) whether any material considerations, including the effect of the development on the character of the settlement and on the amenity of neighbouring houses, warrant determining the appeal other than in accordance with those provisions.

2. The current development plan for this area comprises the Highland Structure Plan 2001 and the Ross and Cromarty East Local Plan 2007. The council's reason for refusal refers to three policies in these plans. Structure Plan policy G2 is headed "Design for sustainability" and requires proposed developments to be assessed on the extent to which they meet a number of criteria; including their impact on individual and community residential amenity, and the need to demonstrate sensitive siting and high quality design in keeping with local character. Developments which are judged to be significantly detrimental in terms of these criteria shall not accord with the Structure Plan. Policy H3 states that housing development will generally be within existing and planned new settlements. Policy 3 of the Local Plan says that development may be acceptable within the defined boundaries of the listed small rural settlements, and that suitably designed proposals will be supported



if they: are consistent with the General and Housing Policies in the Structure Plan; are consistent with the established settlement/development pattern; can be satisfactorily drained; do not involve undue public expenditure or infrastructure out of keeping with the rural character; and avoid hazards, significant earthworks, prominent siting or conflict with natural and cultural heritage interests.

3. The appeal site lies within the defined boundary of a settlement referred to in the plan as Scotsburn. This is a very narrow and elongated settlement extending along a minor road from Scotsburn in the west through Lamington to East Lamington in the north-east; a distance of about 3.5 kilometres. In sub-section 29 of policy 3 Scotsburn is said to have seen substantial housing development over the last decade and to now have significant servicing problems especially in relation to waste disposal. The majority of development has been contained on the southern side of the road, where the best views are found. Potential for further development is subject to satisfactory drainage arrangements and, where feasible, the use of shared access points. The capacity of the settlement to accommodate further houses is said to be 12.

4. The development of further houses within the settlement boundary of Scotsburn is, in broad principle, in accordance with Local Plan policy 3 and Structure Plan policy H3. This does not imply that every “gap” site within the defined boundary should be so developed. To do so would be to consolidate and intensify what the Reporter who determined the previous appeal for this site described as “a remarkable amount of ribbon development”. Policy 3 says that further development **may** (*my emphasis*) be acceptable and outlines the criteria to be met. In addition it sets a limit of 12 additional houses, I presume for the plan period up to 2017. Information from the council indicates that permission has been granted for a further eight houses since the local plan was adopted; although three are just outwith the settlement boundary. One of the objectors has commented that the number of new houses permitted should be nine (one house included a “granny flat” for which permission was eventually granted as a separate dwelling), and that two permissions are incorrectly shown as outwith the settlement boundary. However, even on that basis, the erection of three houses on the appeal site would not exceed the stated capacity of the settlement.

5. I therefore find no overriding reason why the appeal site should not, in principle, be developed for houses. There is no basis in terms of current policies for the suggestion made by some of the objectors that the site should be retained for possible re-use as crofting land. Nor is there any indication that this would be a practical outcome if planning permission was to be refused. As indicated in one of the letters of objection, there has been a marked intensification in the number of houses in this part of the settlement (referred to as West Lamington) since 1970, but this has been as a result of both earlier and current planning policies. Although much of the development in the settlement is spread out along the southern side of the road I do not consider that infilling this gap on the northern side would be in fundamental conflict with the present character of development in West Lamington, even though it would result in houses on both sides of the road, which is not found elsewhere. Other recent planning permissions have already served to consolidate the development pattern in this area. Local residents are clearly unhappy with the present policy position and it is possible that it might be changed in the forthcoming

Local Development Plan. However I must determine this appeal on the basis of current policies.

6. The council does not dispute the principle of residential development on the site but, rather, the number of houses that should be built. The previous Reporter concluded that the site is in principle large enough for three houses, but no more. This assessment is not binding on either myself or the council, but it is a material consideration of some significance. On the basis of the information supplied for the previous appeal (which I requested also be submitted in this case) I understand why he arrived at that conclusion. In terms of comparative densities, plot sizes and spacing the erection of three houses on this site would not appear to be markedly different from other development in the settlement.

7. However, the overall acceptability of a development does not rest on these three parameters alone. It is not just a question of how many houses can be accommodated, but also how they relate in terms of size, design and siting to the circumstances of the site, the character of the area and to adjoining development. Whilst there has been some criticism of the design of the houses from objectors, this view is not shared by the council. The current designs have incorporated elements of rural vernacular architecture with some modern elements. They are not dissimilar to the design of two new houses built near Dalnaclach, a little to the west of the appeal site. The design of the house on the central plot, in particular, reflects the appearance of traditional houses in the area. I consider that the appellant has addressed the concern expressed in the previous appeal decision over the design of the houses and do not find them unacceptable or out of keeping with the area.

8. The sections through the site illustrate how the houses can be accommodated on the sloping ground without the need for significant under-building, a particular concern in the previous appeal decision. The building platform would be 0.5-1.5 metres above road level and, whilst the two houses on the opposite side of the road are at a slightly lower level, I do not consider that the overall impact on them would be overbearing. Some excavation into the upper part of the site would be needed, especially on plot 1, where it would extend to over two metres in depth. However, there appears to be sufficient ground available to ensure that the land can be graded at a reasonable angle to provide a useable garden. Whilst the perspective drawing is intended to be an “artist’s impression” it appears to significantly understate the height of the houses and could be misleading. I place no weight on it in assessing the overall visual impact of this development.

9. Although part of the house on plot 1 would be 1¾ storeys in height, that part is well back from the road (about 24 metres) and its scale is mediated by the single-storey projection to the front. The mature trees on the boundary would avoid any significant loss of privacy for the adjoining cottage (Fern Hollow). The house on plot 2 is of a scale and appearance appropriate to the area and also well back (26 metres) from the road.

10. However, I have serious misgivings about the relationship of the house on plot 3 to the adjoining house to the east, Evelix Cottage. Although the front of the new house would align with the front of the cottage, the rear part would project beyond the back of that house and have windows looking onto its garden at a distance of 6-7 metres. I consider that this would result in overlooking of the existing house and a loss of privacy to its occupants.

Whilst the proximity of the new house might be considered acceptable in a more urban situation, I am of the view that in a rural location such as this a greater degree of seclusion and privacy would normally be expected. The appellant has suggested that this could be achieved through appropriate landscaping, to be subject to a condition on the planning permission. However, the detailed site layout plan shows the planting of seven trees along the boundary, far from the “serious landscaping” referred to in the previous appeal decision. Although planting along the boundary may be desirable, regard must be had to the suitability of the species used, the time required to form an effective screen, and the effect that such screening would itself have on the adjoining garden.

11. The impact of the proposed house on plot 3 on Evelix Cottage was identified in the planning officer’s committee report. He suggested that the situation could be considerably improved by repositioning the house within the plot and relocating the garage on its eastern side. I am not convinced that this is necessarily the most appropriate solution. I consider that the design and siting of the house nearest to Evelix Cottage needs be re-visited. One option would be for the new house to be further from the boundary and aligned with the cottage at both front and rear, with no windows facing directly onto the neighbouring garden. I consider that the scale and massing of the house should also be reduced, to reflect more closely that of Evelix Cottage. Reducing the height of this house would more logically relate to the slope of the site up from west to east, with the tallest house on the lowest part (plot 1) and the lowest house on the highest part (plot 3). All told this might result in a smaller dwelling that currently proposed but I do not believe that the size of the house should be an overriding consideration.

12. Dealing briefly with other matters raised, concern has been expressed by some objectors about drainage problems in this area. The results of infiltration tests were submitted with the previous appeal and, in any event, it is for the council to determine whether the ground conditions are suitable for the system of foul drainage disposal proposed. I am satisfied that both this and details of surface water drainage could be dealt with through an appropriate suspensive condition.

13. The visibility splay to the east appears to fall marginally below that specified by the roads authority but this is not an issue mentioned in the reasons for refusal. The council has subsequently confirmed that it is satisfied that the required sight lines can be achieved. I appreciate that the use of a shared access at the western end of the site seeks to achieve the maximum feasible sight lines and to respond to the Local Plan’s encouragement for the use of shared access points. I have to say that the proposed internal access road parallel to the public road seems both a profligate use of space and to create a very “suburban” character for the development. I recognise that some of the existing development, especially further to the north-east, also has a suburban feel to it but it might be hoped that current developments could achieve a higher standard. There is a tension between meeting the roads authority’s requirements and avoiding the creation of wide open spaces along the frontage of the site. It might be possible to ameliorate the latter effect by suitable landscaping behind the visibility splay, but the details shown on the amended site layout plan fall far short of an adequate specification in this respect. Consideration could also be given to treating the internal roadway and drives in as informal a manner as possible. However, these are matters for the council to consider in relation to any further applications.

14. Returning to the determining issues I find that the principle of developing this site for houses is consistent with the development plan. I agree with the conclusion of the previous Reporter that, in the context of the existing settlement character, the site could accommodate up to three houses. It follows that I do not accept the view that, as a matter of general principle, only two houses should be built on the site. I am not wholly clear whether that is the council's stance as its appeal submission indicates that members of the committee suggested that the development of two houses would be more suitable. Whether or not that is the case is not, however, the critical consideration. Rather, it is whether the current proposal is an acceptable (not necessarily the best) solution, taking account of the development plan and other material considerations. Where I do agree with the council's submission, however, is with regards to the relationship between the easternmost house and Evelix Cottage. I find that, in the context of this small rural settlement, the presently proposed house on plot 3 would cause an unacceptable loss of privacy and reduction of amenity for the occupants of the adjoining house. Assessing the development against the criteria in Structure Plan policy G2 I find that it would have a significantly detrimental impact on individual residential amenity, and would thus not be in accord with the plan. Whilst the development might meet most of the requirements of Local Plan policy 3, as it does not comply with the General Policies of the Structure Plan it also fails the former policy in an important respect.

15. I appreciate that the appellant has sought to address the concerns expressed in the earlier appeal decision in terms of the scale, design and visual impact of the proposed houses. Nonetheless I find the revised proposal for three houses unacceptable for the reasons given above. All told I conclude that this proposal does not accord with the relevant provisions of the development plan in significant respects. I have considered all other matters raised but find none that persuade me to alter my conclusion that planning permission should be refused.

*M D Shiel*

Reporter