

**THE HIGHLAND COUNCIL**

**SOUTH PLANNING APPLICATIONS COMMITTEE**  
**21 October 2014**

Agenda Item	6.2
Report No	PLS/081/14

**14/03291/PIP : Hugh Banks**  
**Land to north west of Elmpark, Nethybridge**

**Report by Area Planning Manager - South**

**SUMMARY**

**Description :** Erection of dwelling (renewal of planning permission 11/02888/PIP)

**Recommendation - GRANT**

**Ward :** 21 Badenoch and Strathspey

**Development category :** Local

**Pre-determination hearing :** Not required

**Reason referred to Committee:** Objection by Community Council as statutory consultee.

**1. PROPOSED DEVELOPMENT**

- 1.1 Application for planning permission in principle to erect a house on garden ground at Elmpark, a bungalow on the north-western edge of Nethybridge.
- 1.2 There was no pre-application discussion. This is not mandatory for local developments.
- 1.3 Access to the site would be by an extension of the existing house's driveway, which joins the B970 at a point just north of the end of the field which separates Broomhill Court from the B970. The site contains the septic tank and soakaway serving the existing house. The existing house was developed at a time when the site was remote from the public sewer, but the applicant proposes to serve the new house by means of septic tank and soakaway for the reasons set out in section 8.4 below.
- 1.4 No supporting documents.
- 1.5 **Variations:** No variations have been made to the application since it was lodged.

## 2. SITE DESCRIPTION

- 2.1 The site is a lawn on the west side of the existing house bounded by the rear gardens of Broomhill Court to the south, the Speyside Way (former Speyside railway line) to the west, and croftland to the north. It is elevated a couple of metres above the level of Broomhill Court. The site area, excluding the access, extends to approximately 0.1 ha. The boundaries of the plot itself are unvegetated but a conifer hedge runs along the line of the proposed access, in front of the existing house.

## 3. PLANNING HISTORY

- 3.1 03/00179/OUTBS - erection of dwelling (amended siting): Permission in principle granted 12/9/08 following conclusion of Section 75 Agreement  
11/02888/PIP - erection of dwelling (renewal of planning permission 03/00179/OUTBS): Permission in principle granted 8/11/11

## 4. PUBLIC PARTICIPATION

- 4.1 Advertised : Unknown Neighbour. Expiry date 25/9/14  
Representation deadline : 25/9/14  
Timeous representations : 0  
Late representations : 0

## 5. CONSULTATIONS

- 5.1 **Community Council:** Objecting on grounds of access, and splitting of feu leading to overdevelopment of the site.  
5.2 **CNPA:** No objection.

## 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

### 6.2 Cairngorms National Park Local Plan 2010

- 6 Landscape  
12 Water Resources  
16 Design Standards for Development  
19 Contributions to Affordable Housing  
20 Housing Development within Settlements

## **7. OTHER MATERIAL CONSIDERATIONS**

### **7.1 Draft Development Plan**

Cairngorms National Park Local Development Plan

### **7.2 Highland Council Supplementary Planning Policy Guidance**

Not applicable

### **7.3 Cairngorms National Park Local Plan Supplementary Planning Guidance**

Water Resources

Affordable Housing

### **7.4 Scottish Government Planning Policy and Guidance**

SPP

### **7.5 Other**

Not applicable

## **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 site lies within the Local Plan Settlement Boundary. The principle of development is therefore consistent with Structure Plan and Local Plan strategies, subject to the detailed tests of SP G2 and LP Policies, including the qualifications of Policy 20. The material considerations arising from these detailed tests and the issues raised in the Community Council objection are considered below.

### **8.4 Material Considerations**

**Plot size:** The plot size is comparable to many in Nethybridge including a number in the vicinity which also have to rely on septic tanks and soakaways for waste water treatment. It is only approximately half of what would in landscape terms be the apparent effective residual curtilage of Elmpark, as there is a large block of trees between that house and the B970. Clearly the site could not comfortably accommodate a house with a footprint as large as that of Elmpark, but the plot ratio proposed in any detailed submission, rather than the site area as presented for permission in principle, would be the true test of overdevelopment. Development of the site would be consistent with the character of the settlement, and subject to a small enough house footprint the site could accommodate LP 20's requirement for "appropriate amenity space, and parking and access arrangements".

**Access:** The Community Council objection does not explain its concerns about access in any detail. However the safety of the access has been considered in previous applications. Adequate visibility is available for traffic speeds of 30 mph. In order to achieve that, the 2008 permission carried a suspensive condition prohibiting any work on the site until the 30 mph speed limit had been extended from its former limit near the Nethybridge Hotel to a point north of the Elmpark access. This has now been undertaken, with the applicant having previously paid a financial contribution towards the cost of promoting the necessary Traffic Regulation Order (TRO). On the basis of the speed limit having been extended and of previous Roads consideration of the issue it is judged that subject to the formation of the requisite visibility splays the development can be undertaken without harm to road safety.

**Drainage:** LP 12 presumes against development not connected to the public sewer unless it is in a small settlement (population equivalent less than 2000) where there is no system or only a limited connection system. The previous permission was granted on the basis that a connection to the public sewer was impractical due to lack of wayleave through Broomhill Court; consistency with the decision to grant permission for a house on another site nearby using a septic tank and soakaway; and the existence of a Section 75 Agreement requiring both the proposed house and Elmpark to be connected to the public sewer if that were to be made practicable by development of neighbouring land. As there has been no material change in Policies or in these circumstances since 2011 it is considered that the development would continue to meet the terms of the “small settlements” exemption of LP 12.

**Developer Contributions:** No LP 19 affordable housing contribution was sought at the time of the 2011 application on the principle of natural justice. Because of the Council’s tardy promotion of the speed limit TRO the suspensive condition on the 2008 permission could not be discharged before the permission as a whole expired. The failure to implement the 2011 permission, however, is not attributable to any inaction on the Council’s part. As an application for an entirely new and self contained planning permission, therefore, the development is liable to make the requisite contribution as specified in the Local Plan’s SG.

#### 8.5 **Other Considerations – not material**

None

#### 8.6 **Matters to be secured by Section 75 Agreement**

The affordable housing contribution may be secured by a Section 75 Obligation if the applicant opts for that mechanism. However, given the disproportionate cost of this mechanism in relation to the level of contribution required, most applicants in similar situations have opted to pay the contribution directly against a letter of undertaking to issue permission upon receipt of the contribution. This option will be offered to the applicant.

## 9. CONCLUSION

- 9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## 10. RECOMMENDATION

<b>Action required before decision issued</b>	Yes	
Notification to Scottish Ministers	No	
Notification to Historic Scotland	No	
Conclusion of Section 75 Agreement	Yes	<b>Or advance payment</b>
Revocation of previous permission	N	

**Subject to the above**, it is recommended the application be **Granted** subject to the following conditions and reasons:

1. No development shall commence until all of the matters specified below have been approved on application to the Planning Authority:
  - i. a detailed layout of the site of the proposed development (including site levels as existing and proposed);
  - ii. the design and external appearance of the proposed development;
  - iii. landscaping proposals for the site of the proposed development (including boundary treatments);
  - iv. details of access and parking arrangements; and
  - v. details of the proposed water supply and drainage arrangements.

**Reason** : Planning permission is granted in principle only and these specified matters must be approved prior to development commencing.

2. Any details pursuant to Condition 1 above shall show a development featuring the following elements:
  - i. the maximum height shall not exceed that of the existing house "Elmpark";
  - ii. the house shall not occupy more than 15% of the area of the site outlined in red;
  - iii. the house shall be in line with "Elmpark";
  - iv. walls finished in a light coloured harling;
  - v. the roof clad in dark grey tile; and
  - vi. the south boundary of the site and of the access to the site screened by fencing and/or hedging.

**Reason** : In the interests of visual and residential amenity.

3. No other development shall commence until the site access has been constructed in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines, with:
- i. the junction formed to comply with drawing ref. SDB 2; and
  - ii. visibility splays of 2.4m x 90m (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction.

Within the stated visibility splays, at no time shall anything obscure visibility between a driver's eye height of 1.05m positioned at the X dimension and an object height of 0.60m anywhere along the Y dimension.

**Reason** : In the interests of public safety.

4. If at any time the land to the north of the site is developed, and that development is connected to the public sewer, the septic tank serving the house hereby approved shall be decommissioned and the house connected to the public sewer serving the said development.

**Reason** : To ensure that the development complies with Policy 12 of the Cairngorms National Park Local Plan 2010.

## **REASON FOR DECISION**

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

## **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION IN PRINCIPLE**

In accordance with Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended), an application or applications for the approval of matters specified in conditions attached to this planning permission in principle must be made no later than whichever is the latest of the following:

- i. The expiration of THREE YEARS from the date on this decision notice;
- ii. The expiration of SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii. The expiration of SIX MONTHS from the date on which an appeal against such refusal was dismissed.

The development to which this planning permission in principle relates must commence no later than TWO YEARS from the date of the requisite approval of any matters specified in conditions (or, in the case of approval of different matters on different dates, from the date of the requisite approval for the last such matter being obtained)., whichever is the later. If development has not commenced within this period, then this planning permission in principle shall lapse.

## **FOOTNOTE TO APPLICANT**

### **Accordance with Approved Plans & Conditions**

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

### **Flood Risk**

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

### **Scottish Water**

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

### **Septic Tanks & Soakaways**

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

### **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at:  
<http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

<http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationformsforroadoccupation.htm>

### **Mud & Debris on Road**

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

**Construction Hours and Noise-Generating Activities:** You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact [env.health@highland.gov.uk](mailto:env.health@highland.gov.uk) for more information.

**Building Regulations:** Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at [BuildingStandards@highland.gov.uk](mailto:BuildingStandards@highland.gov.uk) or on 01349 886606.

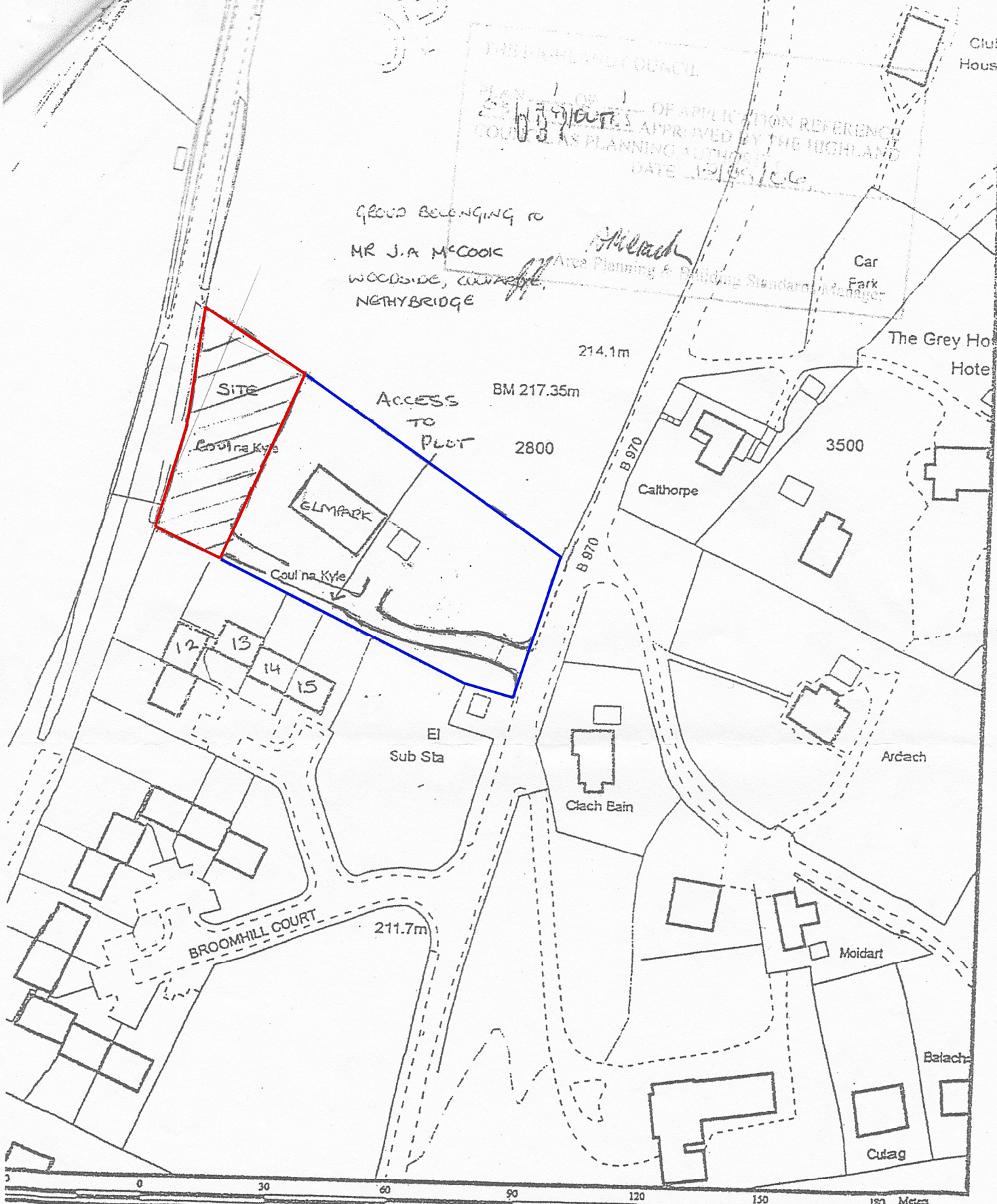
Signature: Allan J Todd  
Designation: Area Planning Manager - South  
Author: Andrew McCracken  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 – Site plan



THE HIGHLAND COUNCIL  
 003/003 OF APPLICATION REFERENCE  
 APPROVED BY THE HIGHLAND  
 COUNCIL'S PLANNING AUTHORITY  
 DATE 12/10/00

GROUND BELONGING TO  
 MR J.A. MCCOOK  
 WOODSIDE, CUMMAYNE,  
 NETHYBRIDGE

*M. Mac*  
 Area Planning & Building Standards



**ERECTION OF DWELLING [OUTLINE],  
 LAND AT ELM PARK, NETHYBRIDGE**

**H & L Banks**

SUPPLIED BY THE HIGHLAND COUNCIL PLANNING & DEVELOPMENT SERVICE

scale  
 1:1250

The Highland Council  
 Comhairle na Gàidhealtachd  
 and Community

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