

THE HIGHLAND COUNCIL

SOUTH PLANNING APPLICATIONS COMMITTEE
23 December 2014

Agenda Item	6.4
Report No	PLS/097/14

14/03895/FUL: Mr & Mrs G Leslie
Westburn, Wester Galcantray, Cawdor, Nairn

Report by Area Planning Manager - South

SUMMARY

Description: Erection of a structure for the kennelling of dogs within the south west curtilage of the land (retrospective)

Recommendation: GRANT

Ward: 18 – Culloden and Ardersier

Development category: Local

Reason referred to Committee: 5 or more third party objections.

1. PROPOSED DEVELOPMENT

- 1.1 The proposal seeks to regularise the erection of a dog kennel structure which was erected approximately four years ago within an area of associated garden ground. The kennels are of timber construction and feature 5 caged pens to house the dogs. The kennels are screened by a double-sided vertically slatted timber fence.
- 1.2 The requirement for planning permission was the subject of recent informal discussions with representatives of Flichity Estates, the owner of the property. These culminated in the service of a notice requiring submission of a retrospective planning application.
- 1.3 Access to the site is via the existing driveway and access road.
- 1.4 The applicant has submitted correspondence and photographs in support of the application.
- 1.5 **Variations:** None.

2. SITE DESCRIPTION

- 2.1 The site consists of front curtilage garden ground associated with a single storey cottage that occupies the land and is largely screened from the public road by existing trees. The site is located on the southern edge of the small settlement of Wester Galcantray and is accessed off a private road serving one other residential property. In total, five residential properties are within close proximity of the site.

3. PLANNING HISTORY

- 3.1 The Council received complaints in April 2014 regarding the alleged unauthorised use of the land for business purposes, namely estate management activity and the keeping of working dogs.

Following further investigations it was established that the property had been acquired by Flichity Estates in 2010 and subsequently became the home of the Estate's gamekeeper. A kennel structure was built within the front garden to accommodate several dogs. It is understood that the dogs are owned by the gamekeeper and are used on occasion by the gamekeeper in estate management work.

The kennels require planning permission only because of their location which is within the front garden area and forward of the existing house. The kennels would have become lawful in planning terms by the end of this year having been *in situ* for four or more years. However, in order to enable proper consideration of their design and use, a notice was issued on the landowner under Section 33A of the 1997 Planning Act requiring submission of a planning application. This was timeously submitted on 15 October 2014.

4. PUBLIC PARTICIPATION

- 4.1 Advertised: Not applicable.

Representation deadline: 09 November 2014

Timeous representations: 7 representations from 7 households

Late representations: None

- 4.2 Material considerations raised are summarised as follows:

- The site is being used for commercial purposes;
- The keeping of dogs has an adverse impact on amenity by virtue of noise and smell;
- The location of the kennel structure has affected existing trees;
- The submitted location plan is inaccurate and the current application omits other structures on the land.

- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5. CONSULTATIONS

- 5.1 **Environmental Health:** No objection. External accommodation of a large number of dogs close to residential properties could result in a loss of amenity if management controls are not effectively applied.

Prior to submission of the application, the use of the kennels has been investigated separately in terms of Environmental Health Regulations and it has been confirmed that there are no issues of concern.

6. DEVELOPMENT PLAN

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

28. Sustainable Design

6.3 Highland Council Supplementary Guidance

Not applicable.

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable.

7.2 Scottish Government Planning Policy and Guidance

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 proposal is supported by Policy 28 of the Highland-wide Local Development Plan providing it can be adequately demonstrated that it will not have a detrimental impact on individual or community residential amenity and demonstrates appropriate design and use of materials.

8.4 Material Considerations

Concerns have been expressed that the site is being used for commercial purposes and that this had led to a change of use from a purely residential use. The commercial nature concerns primarily the keeping of working dogs on the site but also makes reference to other work having been carried out within the curtilage, and the parking of an estate vehicle.

Site inspections have confirmed that the existing house is clearly in residential use and it is considered that the curtilage, which consists of maintained garden space, the kennels and related garden buildings, are of a layout, scale, and design which can reasonably be expected to be found within the curtilage of a residential property. The dogs belong to the occupier and whilst they are used on the estate, they are also family pets and are considered and treated as such.

The kennels occupy a small part of the available curtilage and as such the kennelling of the dogs is not considered to conflict with what is, evidently, a residential use of the site. It is worth noting that had the kennels been located outwith the front garden, planning permission would not have been required.

In relation to other work activity, the agent did acknowledge that for a brief time earlier in the year some minor work for the construction of bird cages had taken place within the curtilage of the property. However, this was essentially a one-off incident and no further complaints or evidence has been submitted to suggest a recurring problem. In any event, this is not a material consideration in the context of the development for which planning permission is sought.

The parking of an estate vehicle within the curtilage of the property and used by the occupier for business purposes, is no different from many employees who bring works vehicles home. It is not considered that this has any material impact on the residential use of the site.

The kennels are located within the south west corner of the site. This is considered to be the best location for the kennels as it means they are sited as far as possible from the majority of nearby residential properties. It should be noted that it is only due to the kennels being located on this part of the site that planning permission is required. The structures themselves are of a size and scale which would in a location to the rear of the house be permitted development.

As noted, earlier in 2014 Environmental Health investigated alleged noise complaints from dogs barking, but were unable to establish and confirm a statutory nuisance. But in order to minimise opportunity for nuisance, the owner subsequently erected a timber means of enclosure around the kennels which appears to have assisted in better managing the situation. It is material to note that there have been no further recent complaints to Environmental Health.

As a consequence of the above, the siting, design and use of the kennels are considered acceptable and any impact on the amenity of the occupiers of nearby residential properties is likely to be minimal.

8.5 Other Considerations – not material

It is noted that the applicant has not identified existing trees adjacent to the kennels on the application form. However, this is not considered to be of any significance to the development. The trees are on the boundary of the site and provide a significant degree of screening for the structure. The trees have no protected status in planning terms and any subsequent damage that may have arisen at the time the kennels were erected is not a material consideration.

A number of neighbours have commented on the fact that an additional timber storage shed and adjacent caged building have not been included with the application. The application was submitted following enforcement action by the Council. As such, it was appropriate that it concentrated on the aspect of the alleged unauthorised development which was subject of the complaints. As no demonstrable harm was being caused by the additional structures on the site, there was no need to include them in the formal action to secure submission of a retrospective planning permission.

8.6 Matters to be secured by Section 75 Agreement

Not applicable.

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. The erection of kennels to house dogs is commonplace throughout the Highlands and it is emphasised that it is only the siting of the kennels within the front garden that dictates that planning permission is required. Although the kennels could be relocated to the rear of the house and therefore constitute a permitted development, the applicant has determined to retain the kennels in their current position to ensure the best separation from the existing houses.

10. RECOMMENDATION

Action required before decision issued No.

Subject to the above, it is recommended the application be **Granted** unconditionally.

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 LIMITS

Not applicable.



FOOTNOTE TO APPLICANT

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 or on 01349 886606.

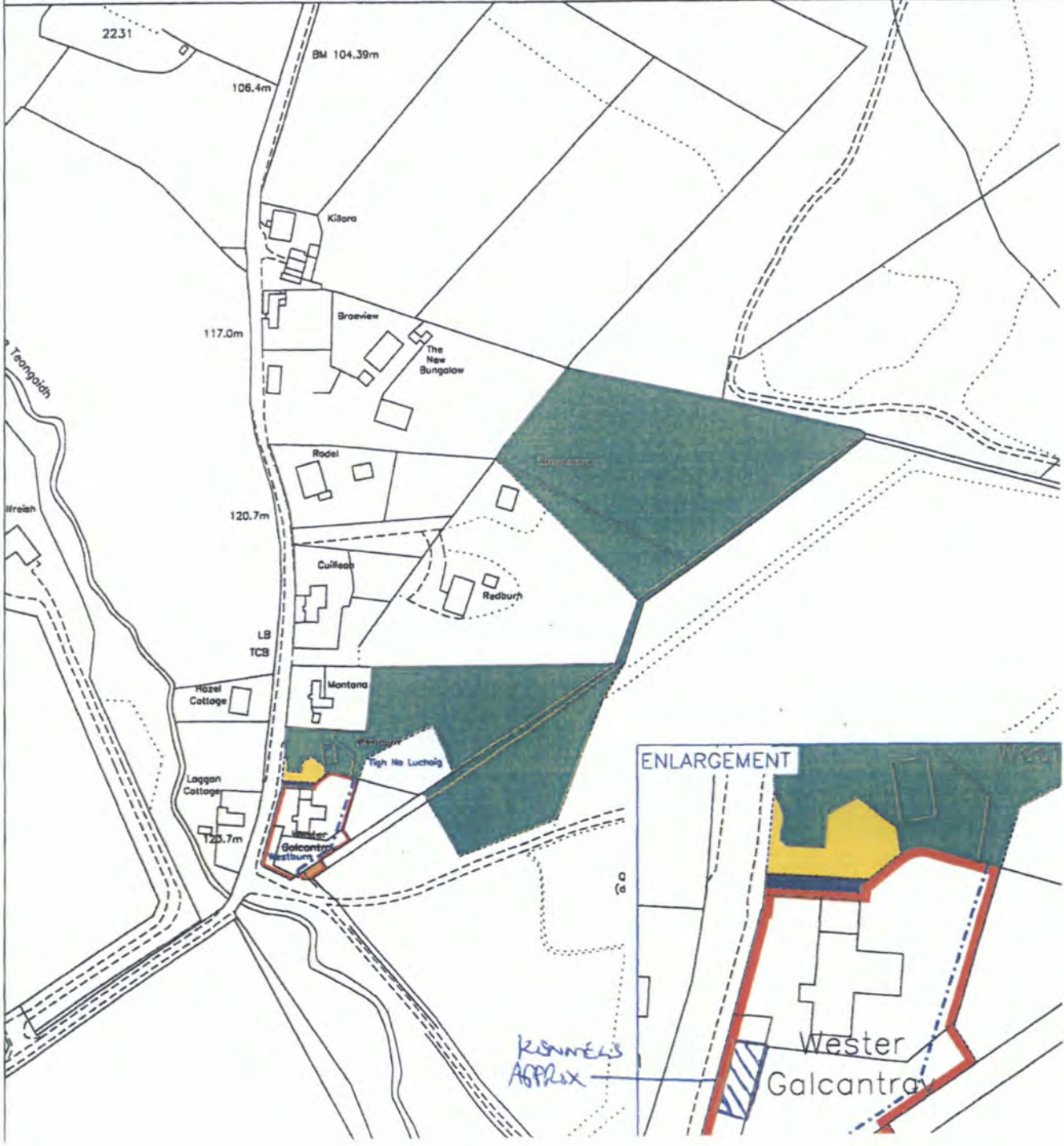
Signature: Allan J Todd
Designation: Area Planning Manager - South
Author: John Kelly
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – Location Plan

INVESTMENT PLANNING &
BUILDING CONTROL SERVICES

13 OCT 2007

 LAND REGISTER OF SCOTLAND	Officer's ID / Date	TITLE NUMBER
	5107 28/3/2007	NRN1684
 ORDNANCE SURVEY NATIONAL GRID REFERENCE	Scale	
	1/2500	
NH8046 NH8047 NH84NW	Survey Scale	
	1/2500	

CROWN COPYRIGHT © - This copy has been produced from the ROS Digital Mapping System on 03/09/2010 with the authority of Ordnance Survey under Section 47 of the Copyright, Design and Patents Act 1988. Unless there is a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner. OS Licence no 100020543.



Highland Council

14/03895/FUL



This map is for reference only and must not be reproduced or used for any other purpose

Scale
1:1000

Reproduced by permission of Ordnance Survey on behalf of HMSO. © Crown copyright and database right (2011). All rights reserved. Ordnance Survey Licence number 100023369