

## Directorate for Planning and Environmental Appeals

Telephone: 01324 696459 Fax: 01324 696444  
E-mail: Christine.Brown@scot.gov.uk

Ms K Lyons  
Highland Council  
Sent By E-mail



Our ref: PPA-270-2118

20 February 2015

Dear Ms Lyons

### **PLANNING PERMISSION APPEAL: 59B STRATHSPEY DRIVE GRANTOWN-ON-SPEY PH26 3EY**

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action.

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

*Christine Brown*

**CHRISTINE BROWN**  
**Case Officer**  
**Directorate for Planning and Environmental Appeals**



## Appeal Decision Notice

T: 01324 696 400  
F: 01324 696 444  
E: [dpea@scotland.gsi.gov.uk](mailto:dpea@scotland.gsi.gov.uk)



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Decision by Jill Moody, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2118
- Site address: 59B Strathspey Drive, Grantown-on-Spey PH26 3EY
- Appeal by: Christopher Blake against the decision by The Highland Council
- Application for planning permission: 14/03015/FUL dated 3 August 2014 refused by notice dated 6 October 2014
- The development proposed: Change of use of open amenity ground to house curtilage
- Application drawings: extract from the Land Register of Scotland for title number MOR7628 showing the site location
- Date of site visit by Reporter: 29 January 2015

Date of appeal decision: 20 February 2015

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### Decision

I allow the appeal and grant planning permission subject to the following condition:

“Notwithstanding the provisions of Article 3 and Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), no development shall be permitted within the site subject of this permission, without formal planning permission having been granted in advance by the planning authority.”

The reason for this condition is to safeguard the visual amenity value of the site and the residential amenity of the neighbouring properties. Attention is also drawn to the advisory notes at the end of this decision.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan is made up of the approved Highland Structure Plan and the adopted Cairngorms National Park Local Plan. General Strategic Objectives G1 and G2 from the approved structure plan have been drawn to my attention, but it seems to me that Policy SR2 is also relevant. The reason for refusing planning permission refers to adopted local plan Policy 36. Having regard to these provisions, the main issues in this appeal are the impact of the loss of this open space for local amenity and for the value and integrity of the remaining open spaces in the area.



2. With regard, to amenity, I note from my site visit that the site comprises a rectangle of land between neighbouring houses on the west edge of the residential estate. The site is no wider than about a normal house driveway, and ground within it rises sharply from Strathspey Drive in front, to a more level area that is accessible from the appellant's adjoining garden. Behind that, the ground rises steeply again to a disused part of the Strathspey railway line, which is now a woodland corridor and part of the core path network. The site is grassed, it contains some planted shrubs, and all boundaries but the road frontage are fenced.

3. Because the site is small and narrow, it is visible only from a very restricted area, and mostly from the road directly in front. The site also merges in those views with the other house gardens. Given that, the site has low visual significance and little impact on the look and character of either the road or the wider housing estate. Provided that the site is not built upon, the only change to the streetscene that might result from the proposal would probably be more planting or a roadside fence. Many other houses nearby already have planted front gardens that are contained by fences, so that kind of change would let the site blend even more with the prevailing local character. Subject to a planning condition to restrict building on the site, I am satisfied that the proposal would not harm the established visual amenity of the street and it would not make the area feel more urban.

4. The small size and ground levels of the site also reduce its usability or play space value. The site may align with other open spaces nearby, but they are larger and flatter, so they contribute more to local visual amenity and they are more usable. I assume that these are the spaces maintained by the council. Unlike these other spaces, the appeal site has no significant value or function as public open space, especially bearing in mind that the appellant is responsible for its maintenance and the evidence does not establish that this space is meant to be kept available for public use.

5. The site adjoins the core path along the railway line, but there is no evidence of a direct link across it to the path, or of any public right of access. Further, getting from the road onto the core path would entail a scramble up 2 fairly steep embankments. The site is also not the only potential route from the top side of housing estate to the railway path because there are 2 others comparatively close by. Both of these others are properly formed, established entrances and, while one is a flight of steps, the other is more level so that it is by far the most easily used.

6. Policy SR2 protects amenity open spaces unless they are replaced, with local plans to assess existing provision. Policy 36 presumes against the loss of existing provision, especially where it appears on a local plan proposals map or in an open space strategy. Policy 36 then only supports proposals involving loss where an audit shows that the loss would not result in a deficit and no alternative is available, or the loss is compensated either in real terms or by a commuted payment. The Policy is justified with reference to the kinds of benefits that open space delivers, which are described in national Planning Advice Note 65: "Planning and Open Space".

7. The proposal would remove an open space and the loss would not be compensated. However, as stated above, the space is not public and its amenity value is limited, in which case I find doubt about whether the loss of the space would produce a significant local deficit. Further, as far as I have been made aware, open space provision has not been

assessed by the adopted local plan, as the approved structure plan requires. Like all of the other open spaces nearby, the site is also not shown on a local plan proposals map and it is not mentioned in a strategy. Without that kind of background information to establish the value of the site and to support application of the development plan policies, it is difficult to simply reject the proposal as contrary to Policy 36.

8. I note from my site inspection that the housing estate appears to have grown incrementally over a period of time, with no obvious coherent pattern of open space provision. The builder may have been required to provide amenity space and the site is shown as such on the submitted approved layout plan. However, several similar spaces shown on the approved layout plan have already been incorporated into house gardens, and a footpath link to open space on the south site edge seems to have become a house driveway. Further, part of one of the more valuable open spaces that is situated very close by the appeal site seems to have been incorporated into an adjoining house garden, before being developed recently as a separate house plot. Therefore, I am unable to conclude that there is a planned, coherent strategy for the estate, or that the open spaces are all being safeguarded consistently and in accordance with development plan policy.

9. Therefore, while I conclude that the proposal may not accord with a strict interpretation of all of the applicable development plan policies, the proposal would have a very limited impact on local amenity and on the value and integrity of the remaining open spaces in the area. Under these circumstances, I am satisfied that a departure from those policies is justified and consent can be granted, albeit subject to a condition restricting subsequent built development on the site.

10. I have considered all the other matters raised, but there are none that would lead me to alter my conclusions.

*Jill Moody*  
Reporter

### Advisory notes

- The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).
- Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).