

Appeal Decision Notice

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Decision by John H Martin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2133
- Site address: Land 445 metres north-east of 5 Kinbeachie, Culbokie, Dingwall IV7 8LS
- Appeal by Mr & Mrs M MacLennan against the decision by Highland Council
- Application for planning permission 14/03218/FUL dated 19 August 2014 refused by notice dated 15 June 2015
- The development proposed: one and half storey house with detached double garage
- Application drawings: Drgs.Nos.MM-02/001B; 002B; P100A; P101A; P102B and; P103B
- Date of site visit by Reporter: 7 October 2015

Date of appeal decision: 26 October 2015

Decision

I allow the appeal and grant planning permission subject to the 7 conditions listed at the end of the decision notice. Attention is drawn to the 3 advisory notes at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are: (1) whether or not it is essential for a house to be erected on the site to manage the croft as an exception to the policy presumption against new housing in the open countryside and; (2) if proven to be essential, whether it is desirable to require a section 75 agreement tying the house to the croft.

2. The development plan in this case is the Highland-Wide Local Development Plan 2012 (HWLDP) and the Ross and Cromarty East Local Plan (RCELP). In the reason for refusal the council refer to HWLDP policy 35 and the Supplementary Guidance – Housing in the Countryside. The Committee report also refers to HWLDP policy 34 – Housing in the Countryside (Hinterland) while RCELP policy GSP10 identifies the relevant hinterland boundary. I shall also take account of Scottish Planning Policy (SPP) regarding residential development in the countryside.

3. The appeal site is a rectangular plot of about 0.15 hectares in the north-western corner of the appellant's croft served by an existing farm track, over which they have a servitude right of access from a public country road off the B9163, Dingwall to Cromarty Road. The site lies in open countryside of farmland and woodlands to the north-east of



Culbokie and on the south-east facing slope of a shallow valley. There are several sporadic dwellings off the B9163, and groups of rural houses at Kinbeachie and Burnfield nearby. Mrs MacLennan's parents, Mr & Mrs D Mackenzie of 3 Kinbeachie, own registered crofts (1-4) of which the appellants are to be tenants of crofts Nos.3 and 4 amounting to 6.36 hectares. The land is currently pasture for beef cattle which the appellants intend to mix with arable.

4. HWLDP policy 35 presumes against single houses in the open countryside of the hinterland area, but the supplementary guidance allows for exceptions where agricultural land management needs can be proven. In its submission, the Crofting Commission noted that, since their purchase, the 4 crofts have been removed from tenure but the Mackenzie's application to register them as crofts was approved in 2012. The Commission further drew attention to the statutory right under Schedule 2 of the Crofters (Scotland) Act 1993 for a crofter to erect one dwelling on any croft, while Section 5AA of the Crofters Reform (Scotland) Act 2010 requires a crofter to reside on, or within 32 kilometres of, that crofter's croft. This ensures that crofts are occupied by their rightful owner or tenant.

1st issue

5. Paragraph 80 of SPP states that where it is necessary to use good quality land for development, it should minimise the land used, be essential to meet an established need, be small scale and directly linked to a rural business. While this would appear to support the proposal, the council's Agricultural Officer was not satisfied that the croft needed a full time presence on the land while the appellants remain in full time employment and Mr & Mrs Mackenzie are in residence nearby to maintain a high degree of supervision.

6. The appellants intend to keep cows and calves, sheep, pigs and piglets, horses, hens and make hay/silage and grow barley which together would exceed the 1900 hours/annum to require 1 labour unit. However, the Agricultural Officer considered that, given the size of the croft, it would be difficult to carry out all these activities and the unit could quickly be overworked. He/she also found that while it might be desirable for appellants to live on the croft it is not necessary to meet its operational needs.

7. Although I appreciate the problems the appellants have in trying to work full time in Inverness while running the croft, the distance of about 24km (15 miles) from Inverness falls within the Croft Commission's specified 32km limit for a crofter's residency duty. This, coupled with Mrs MacLennan's parents owning the 4 crofts and living in close proximity, suggests that the test of essential need might not be met. However, this would depend on Mr Mackenzie always being available, which cannot be guaranteed, and would defeat the object of the appellants seeking to establish their own croft.

8. There could therefore be a conflict between the right of new crofters to build a house on any croft and the essential need for them to do so, but the appellants have not submitted an Operational Needs Assessment for the 2 crofts in question. At the meeting on 16 December 2014, the North Planning Applications Committee found in favour of the applicants because; the demographics of the area justified the house; the design was proportional and acceptable within the development plan and compatible with other sporadic houses in the area; the appellants would be returning to work the croft; the land is of good quality; the applicants already work the land and would expand the croft and; under

policy 35, the house is essential for land management. However, this decision was subject to the appellants completing a section 75 agreement tying the house to the land. Because the appellants were unwilling to enter into such an agreement due to difficulties in obtaining funding, at the meeting on 9 June 2015, the Committee refused the application because no section 75 agreement had been completed.

9. Bearing in mind the encouragement in SPP to encourage small scale rural businesses and sustainable development that would provide employment, coupled with the aims and objectives of the Crofting Commission to create vibrant, confident crofting communities, I take the view that the appellants should be given the opportunity to establish their small croft on this land. This would ensure that the 4 croft units would continue to thrive and, when Mr Mackenzie retires, the appellants would be in good position to expand their own enterprise.

10. Although I accept that it is technically possible to run the croft from Inverness, with Mr Mackenzie's help, the only reason the appellants are still in full time work there is because they are not able to run the croft themselves on the land. Each case must be considered on its own merits and I consider that there is sufficient need for a full time presence on the land to supervise livestock and manage the croft and, thereby, to justify the erection of a house on the land. While I have some reservations over the need for a young family to have a dwelling of the size proposed, the Committee raised no objection to its size, design or location because it would be similar to many of the other rural dwellings nearby. I therefore conclude that the special circumstances of this case are such that it is essential for a house to be erected on the site to manage the croft and that the proposal would thereby accord with HWLDP policy 35, SPP and the Crofting Commission's objectives.

2nd issue

11. Paragraph 83 of SPP is very explicit in supporting new development in rural areas that encourage sustainable development; would provide employment; support and sustain fragile and dispersed communities; provide small scale housing subject to location, access, siting, design and environmental impact; allow well sited houses outside settlements designed to fit with local landscape character and; not to impose occupancy restrictions on housing.

12. Therefore, where there is an operational need to justify a new house on the land, it is not appropriate to impose an occupancy condition on the permission. The council clearly recognise this so, on this and other permissions, it has required a section 75 agreement that tying the operational holding to the house. As this is tantamount to an occupancy condition, it flies in the face of SPP policy which is clear that there should be no occupancy restrictions on new housing in the countryside. The appellants have drawn attention to several local cases where, because of the problems of securing finance with section 75 obligations in place, the council has had to revoke them. I appreciate the council's wish to prevent the house being sold separately from the agricultural unit but, as the Crofting Commission makes clear, the right to erect a house on a croft is to serve that croft so, while the croft continues to exist the house would be tied to it in any event. As a result, I find that there is no need to impose the additional liability of a section 75 obligation, particularly with the financial limitations that come with it.

13. I therefore conclude that, as an essential for a house need has been found in this case, there is no requirement for a section 75 agreement tying the house to the croft.

Material considerations

14. Apart from my finding that there is an essential need for the proposed house to serve the croft, I note that the Scottish Government intends to roll out a funded pilot scheme for the provision of self-build mortgages across the Highlands. Even so, there is no indication when this might materialise, so the appellants have to rely on normal borrowing from banks or building societies, none of which have shown willing to finance the build with a section 75 agreement in place.

Conditions

15. The council have suggested 4 conditions in its statement with which I agree, although there may be some minor changes in the wording. I have noted the footnote to the applicant at the end of the council's statement, covering a range of additional requirements, which the appellants are advised to heed. However, because some of these require controls over the development itself, I consider that they would be better dealt with by means of conditions. I shall, therefore, add a condition to ensure that the works are carried out strictly in accordance with the approved drawings rather than relying on a footnote for that purpose. Similarly, I shall impose conditions on mud on the road, construction hours and noise generating activities.

Conclusions

16. My overall conclusions are that it is essential for a house to be erected on the site to manage the croft as an exception to the policy presumption against new housing in the open countryside and, in the light of the advice in SPP and from the Crofting Commission, there is no requirement for a section 75 agreement tying the house to the croft.

17. I therefore conclude, for the reasons set out above, that while the proposed development may not fully accord with the relevant provisions of the development plan, granting planning permission is still justified by reason of the essential need for the proposed house to serve the croft, which is a material consideration of significant weight. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

John H Martin

Reporter

Conditions

1. No other development shall commence until the site access has been upgraded in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines with the junction formed to comply with drawing Ref:SBD2. Reason: To ensure that an adequate level of access is provided for the development, in the interests of road safety and amenity.

2. No development or work (including site clearance) shall commence on the construction of the house, hereby approved until proposals for an archaeological watching brief to be carried out during site clearance and excavation works, in accordance with the attached specification, has been submitted to, and approved in writing by, the Planning Authority. Thereafter, the watching brief shall be implemented as approved

Reason: The application lies within a wider area where important prehistoric remains are recorded. There remains the potential for associated archaeological features or finds to be affected by the development. While the risk is not such as to warrant a full archaeological excavation, it is important that the full nature and extent of any archaeological features should be identified and recorded before destruction.

3. No development or work shall commence on the construction of the house, hereby approved until a detailed specification for all proposed external materials and finishes (including trade names and samples where necessary) has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details.

Reason: In order to enable the planning authority to consider these matters in detail prior to the commencement of development; in the interests of amenity.

4. The development shall be landscaped in accordance with a accordance with a planting schedule which shall be submitted to and approved by the Planning Authority before development commences on the construction of the house hereby approved.

The schedule shall indicate the siting, numbers, species and heights (at the time of planting) of all trees, shrubs and hedges to be planted, and shall ensure:-

(a) The scheme shall be completed during the first planting season following the completion of the construction works, or as otherwise may be agreed in writing by the Planning Authority as a non material variation.

(b) All trees shall be supported with a stake and tie and protected against rabbit damage using a spiral guard.

(c) The landscaped areas shall be maintained for a period of three years or until established, whichever may be longer.

Any trees or shrubs removed, or which in the opinion of the Planning Authority are dying, being severely damaged or becoming seriously diseased within five years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure the implementation of a satisfactory scheme of landscaping which will in due course improve the environmental quality of the development.

5. The development hereby permitted shall be carried out strictly in accordance with the approved Drawings Nos. MM-02/001B; 002B; P100A; P101A; P102B and; P103B, unless advance written approval for any variations is first obtained from the planning authority.

Reason: to ensure that the development is carried out as approved.

6. Prior to commencement of the development, hereby permitted, full details of strategy for dealing with any material deposited on the public road network shall be submitted to and approved by the planning authority, which shall be strictly followed during the course of the development and maintained until development is complete.

Reason: In the interests of highway safety.

7. During the course of the development, hereby permitted, no construction work (including loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, shall take place outwith the hours of 0800 and 1900 Monday to Friday, 0800 and 1300 on Saturdays or at any time on a Sundays or Bank Holidays in Scotland, unless prior written approval is obtained from the planning authority.

Reason: In the interests of residential amenity

Advisory notes

- 1. 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)).
- 2. 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)).
- 3. 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)).