



Appeal Decision Notice

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Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2160
- Site address: land west of Eight Acres, Smithfield, Culbokie, Dingwall, IV7 8LA
- Appeal by Joyce Hendry against the decision by Highland Council
- Application for planning permission reference 16/02334/S42 dated 23 May 2016, refused by notice dated 8 August 2016
- The development proposed: To develop land without full compliance with Condition 1 attached to planning permission 14/04026/S42 (originally 12/02770/FUL) for the formation of access and house plot and provision of footpath.

Condition 1.

No development shall commence, on the construction of a house until the access that serves the properties Strath View, Danian, The Willows and Elder Cruachan has been permanently closed and all the road improvements and footpath provision as shown on drawings 2562:101 Rev I, 2562:108/01, 2562:102 REV A and 2562:101/02, or as otherwise submitted to and agreed in writing with the Planning Authority in consultation with the Roads Authority, have been carried out and completed to the satisfaction of the Planning Authority in consultation with the Roads Authority. (Reason: To ensure that the road improvements and footpath provision are timeously provided before development of a house on the site commences, in the interests of road safety and amenity and to enable pedestrians to keep outwith the public road and the path of oncoming traffic; in the interests of road safety)

- Application drawing: 2562:200
- Date of site visit by Reporter: 21 December 2016

Date of appeal decision: 16 March 2017

Decision

I allow the appeal and grant planning permission for the formation of an access and house plot and the provision of a footpath on land west of Eight Acres, Smithfield, Culbokie in accordance with planning application 16/02334/S42 without complying with condition 1 (written above) previously imposed by planning permission 14/04026/S42, but subject to the other conditions set out below.



Reasoning

1. The determining issue in this appeal is whether the requirement to construct footpaths along the U2626 Glascairn Road, Culbokie, and the consequential road realignment works, is necessary for the construction of a single dwelling house, having regard to the provisions of the Inner Moray Firth Local Development Plan 2015 (the development plan) and any other material planning considerations.

Background

2. The appeal site is a grassed area of land to the north-east of the U2626 and south-east of Culbokie. The site boundary includes land for the construction of a new access onto the U2626 serving the proposed house, the appellant's own house, 4 other houses and the closure of the existing junction. Full planning permission was granted for the formation of an access, a house plot and the provision of a footpath adjacent to the U2626 in November 2012 and this was amended by the council in April 2015. The appeal site lies adjacent to some 9 other houses, 4 of which currently share a common access off the U2626, adjacent to the appeal site.

3. Planning application 16/02334/S42 seeks to construct only the new access arrangements as shown on drawing 2562:200, comprising a length of road some eighty metres long, and incorporating a single junction onto the U2626. These new access arrangements can be formed before the commencement of the construction of the house. In effect the other road improvements identified in the April 2015 consent would not be a requirement of the development of this single house.

4. The development plan, adopted by the council on 25 July 2015, allocates site CU3 in Culbokie. This allocation includes the appeal site and land for a further 4 residential plots. It will contribute to housing land supply and is subject to there being improvements to access. Its adoption, 3 months after the approval of 14/04026/S42, is a material change in circumstances. The details shown on drawing 2562:200, which forms part of the appeal proposal, can provide a first phase of road access improvements before the commencement of construction work on the house that is the subject of this appeal, and accords with the development plan. The allocation of site CU3 continues to provide the council with a mechanism for phasing the other road improvement works to avoid piecemeal development and address the increase in road traffic on the U2626, some of which will be attributable to new residential development.

5. Planning applications 15/0358/FUL and 15/0474/PIP for residential development, utilising the same access onto the U2626, have been submitted in respect of the other land allocated in site CU3. The variation to the boundaries of these applications, to include land requisite for the road improvements, is permitted by section 32A(1) of the Town and Country Planning (Scotland) Act 1997. One, 15/0358/FUL, was approved in August 2016, subject to a condition requiring footpath provision and the consequential road realignment along the U2626. This provision in the permission 15/0358/FUL corresponds with the views of the council's transportation planning officer that there should be no further residential

development beyond that included in the appeal site until footpath provision has been carried out along the U2626. The other planning application remains undetermined.

6. It seems to me that there is no dispute that the provision of a new footpath along the U2626, north- west from the new access, will improve road safety and the safety of pedestrians and other non-vehicular users of the road. Based upon my site visit I concur with these views, which are due to the road's current restricted width, the absence of footpaths and limited forward visibility. During my site inspection I also noted the reduced visibility north-westwards that may affect drivers turning onto the U2626 from the existing private access road to the four houses. This would largely be resolved by the implementation of the details contained in drawing 2562:200. The development of this single house will thus provide a contribution to address, in a proportionate manner, the road safety concerns on the U2626 identified by myself, the council, the community council and the objectors.

Considerations

7. In determining the appeal I must have regard to circular 4/1998: 'The Use of Conditions in Planning Permissions'. Circular 4/1998 sets out 6 tests for the imposition of a planning condition, including that a condition is necessary, relevant to the development to be permitted and reasonable in all other respects.

8. In relation to the first test I note that paragraph 13 of circular 4/1998 states that "*in considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not imposed.*" Against this test I find that the extensive improvements to the U2626, of the scale required by planning permission 14/04026/S42, are not proportionate to the construction of this single dwellinghouse. I have been provided with no reasoning as to why the traffic generated by this one proposed dwelling, over and above that from the 9 residential plot developments outwith site CU3, requires such works. In coming to this view I note that the council's transportation planning officer considers that the construction of a single house, in itself, would not create a significant increase in traffic but only one further dwellinghouse should be allowed before the full footpath provision is implemented. I find that the allocation of site CU3 in the development plan, adopted after the approval of planning application 14/04026/S42, does safeguard the opportunity for the council to achieve the necessary road improvement works. As such it remains open to the council to address the road safety concerns of Ferintosh Community Council and those of the objectors.

9. In relation to the third test in the circular I find that condition 1 of planning permission 14/04026/S42 does not fairly and reasonably relate to the construction of this single dwelling house on the appeal site. Hence it does not meet the third test as being relevant to the development proposed, despite the overall desirability for the road improvements in planning terms.

10. Paragraph 39 of circular 4/1998 states that "*an unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms*". I find that condition 1 of planning permission 14/04026/S42, requiring the extensive road improvement

works in relation to the construction of this single dwellinghouse, would be unreasonable by being unduly onerous; it is not justified on its planning merits.

11. On the basis of my assessment of the appeal proposal against these three tests in circular 4/1998, I consider that it would be appropriate to allow the proposed development on the appeal site. However, the appellant must undertake the road improvement works shown on drawing 2562:200 before the commencement of the construction of the house.

12. In determining the appeal I find that little weight can be attached to the effect of the costs of the road improvement works on the viability of the proposal. Financial viability and whether to proceed with the development is a matter for the appellant. However, no useful purpose is served if a proposal granted planning permission cannot proceed. The appellant has made comments on the need for certain aspects of the off-site road works. I am satisfied that these are a matter for the council to address in the context of the other plots on site CU3, in the context of its guidance on access to small housing developments. In their objection to the application the residents of Lochside, Culbokie point to land ownership issues which, they state, would cause the necessary road improvement works to encroach upon their land. Matters of landownership are a separate legal matter and are not material to my consideration.

13. Overall, the appeal proposal will make a proportionate contribution to enhanced infrastructure provision, as sought by the objectors. Specifically, I have been given no reason to doubt that the details shown on drawing 2562:200, in forming a single junction for 6 houses, will be to the benefit of drivers' visibility and road safety generally in the vicinity of the objectors' house, and to other users of the road including pedestrians and horse riders.

Conclusions

14. I am therefore content that the development of one house on the appeal site can proceed without compliance with condition 1 of planning permission 14/04026/S42. I have taken all matters into account, but none would lead me to alter my conclusions. I allow this appeal and grant planning permission for the development comprising the formation of a new access and a house plot and provision of a footpath on the land west of Eight Acres, Smithfield, Culbokie in accordance with the application 16/02334/S42 subject to the following conditions. For the avoidance of doubt this planning permission does not relate to the formation of a footpath adjacent to the U2626 outwith the boundaries shown on drawing 2562:200.

Chris Norman

Reporter

List of Conditions

1. No development shall commence on the construction of a house until the access that serves the properties known at the time of this application as Strath View, Danian, The Willows and Elder Cruachan has been permanently closed off and the new access arrangements as shown on drawing reference 2562:200, or as otherwise submitted to and agreed in writing with the Planning Authority, has been completed in accordance with the approved plan.

Reason: To ensure that the new access with the public road is timeously provided before development of the site for a house commences, in the interests of road safety.

2. In respect of the house within the plot approved, a further application shall be submitted to the local planning authority together with the requisite detailed plans to include: -

- (a) Plans, sections and elevations of the proposed building/s, and colour and type of materials to be used externally on the walls and the roof;
- (b) A detailed layout of the plot as a whole, existing and proposed site levels, including provision for car parking, details of accesses and details of all fences, walls and hedges;
- (c) Landscaping and boundary treatment proposals including any proposed tree felling and tree and shrub planting, to be carried out. For the avoidance of doubt, suitable boundary treatment includes those found in a rural area, such as post and wire fencing, native species hedging or a local stone dyke.

Reason: These matters must be approved prior to the development of the house commencing.