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Mr B Robertson
Highland Council
Sent By E-mail

Our ref: PAC-270-2000
Planning Authority ref: 17/01919/PNO

23 August 2017

Dear Mr Robertson

PRIOR APPROVAL CONSENT APPEAL: 8 CRAKAIG LOTH HELMSDALE KW8 6HP

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. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

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

Yours sincerely

Marie Buchanan

MARIE BUCHANAN
Case Officer
Planning and Environmental Appeals Division





Decision by Don Rankin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PAC-270-2000
- Site address: 8 Crakaig, Loth, Helmsdale, KW8 6HP
- Appeal by Ms Lorraine Cole against the decision by Highland Council
- Application for Prior Approval 17/01919/PNO dated 18 April 2017 refused by notice dated 3 May 2017
- The development proposed: Erection of general purpose agricultural building
- Date of site visit by Reporter: 16 August 2017

Date of appeal decision: 23 August 2017

Decision

I dismiss the appeal and refuse prior approval for erection of a general purpose agricultural building.

Reasoning

1. The appellant submitted an application for permission under the relevant prior notification procedure for the erection of an agricultural building. Under this procedure as defined by Class 18 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, the applicant is required to provide the planning authority with a description of the proposed development, including the proposed design and manner of construction, details of the materials to be used and a plan indicating the route of any private way access. The order, cited above, is very clear that the development is not to be commenced before written confirmation by the planning authority of whether prior approval is not required, prior approval is given or a period of 28 days has passed without the planning authority giving notice of their determination.
2. In this case the applicant submitted the relevant detail. The council indicated within the 28 day period that prior approval was not granted, and by implication that the proposed development was not permitted development and that a planning application would be required to determine whether the proposal was acceptable. The sole reason for this decision was that development having commenced, a prior approval procedure could not be used to give consent to the proposed development. From my site inspection it is clear that prior construction of an access and approach road has taken place together with extensive earthmoving from the site of the proposed building. It is not fully clear from the submissions whether these works were prior to the application or during the 28 day period



of determination. It is the contention of the appellant that the works undertaken were not advance works for the proposal to build an agricultural building and entrance road. They were rather the works necessary to solve a long standing drainage problem. This required access for earthmoving vehicles and the clearance of top soil to determine the course of existing drainage pipes across the site. This, the appellant contends, was legitimate agricultural activity necessary for the working of the croft land and did not require prior approval. The appellant considers therefore that it cannot be regarded as a breach of the requirements of the prior approval regulations.

3. The works carried out involve the opening of an access, including some removal of dry stone walling on the road boundary though on the basis of the submitted photographic evidence I am prepared to accept that some kind of gated field entrance previously existed. A private way route, involving top soil removal to a depth of approximately 1.5 metres and the depositing of some hardcore foundation material at the road entrance, has then been made into the site. The topsoil has further been removed from the entire site of the proposed agricultural building as well as the site of the proposed adjacent dwelling indicated on the submitted site plan. These works far exceed those necessary to determine the route of drainage channels and effect remedial work thereon. I therefore conclude that advance works for the proposed development have taken place.

4. Had the proposal been acceptable permitted development I consider that this advance work could have been overlooked by the council in issuing a determination on the prior approval application. I note however that there are serious concerns, expressed by both Highways Scotland and the Council's Transport Department with respect to the adjacent proposal for a dwelling house. This would use the same access as the proposed agricultural building onto the U2766 (Lothmore Road), the public highway between the A9 junction nearby and the Cackaig Crofts to the north. There are serious concerns regarding the safety of the junction with the A9 should further vehicles be permitted to use it. There are also issues raised in representations with regard to whether the land available is sufficient to sustain an agricultural unit comprising a storage building of the size proposed. There are therefore legitimate concerns with regard to the access and private way as well as the proposed building which necessitate the more detailed consideration afforded by a planning application.

5. Having regard to all of the above I conclude that prior approval cannot be granted in this case. I have taken into consideration all other material considerations but find that none alter my conclusion. The appeal is therefore dismissed.

Don Rankin

Reporter