



---

Decision by Philip Barton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2180
- Site address: Land 40m north of An Teallach, Nethy Bridge. PH25 3DF
- Appeal by Mr Hamish Jack against the decision by The Highland Council
- Application for planning permission dated 19 December 2016 refused by notice dated 14 August 2017
- The development proposed: New house
- Date of site visit by Reporter: 19 December 2017

Date of appeal decision: 2 February 2018

---

## Decision

I dismiss the appeal and refuse planning permission.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan the main issue in this appeal is the effect of the proposal upon the natural environment.

### *Development Plan*

3. The development plan for the area comprises the Highland-Wide Local Development Plan, adopted April 2012 and the Cairngorms National Park Local Development Plan 2015, adopted 27 March 2015. The most relevant policy in this case is Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2015.

### *Material Considerations*

4. Scottish Planning Policy (Woodland) and the Scottish Government's Policy on Control of Woodland Removal are relevant material considerations in this case, as are the fact that the appeal site lies within the Abernethy National Nature Reserve and contains woodland of ancient semi-natural origin (1a ASNO 1750).



5. Where the foregoing material considerations do not attract statutory weight, the amount of weight I have attached to them has been reduced in accordance with the comments I have made about their status and applicability in this case.

### *Natural Environment*

6. In my estimation, about 80 per cent of the appeal site is covered by woodland of ancient semi-natural origin. Only the north-easterly corner of the proposed house and most of the area allocated for vehicular access, manoeuvring and parking would be outside of this designation. Construction of the proposed house would require the removal of several coniferous trees within this woodland. Paragraph 216 of Scottish Planning Policy states that ancient semi-natural woodland is an irreplaceable resource that should be protected from adverse impacts resulting from development. The Scottish Government's policy on control of woodland removal states, on page 7, that there will be a strong presumption against removing ancient semi-natural woodland and, on page 6, that woodland removal should be allowed only where it would achieve significant and clearly defined additional public benefits. These may include economic benefits, such as the local employment and supply chain opportunities to which the appellant refers. Compensatory planting on appropriate site types with at least the equivalent woodland-related nett public benefits may also help to justify woodland removal.

7. According to the appellant, about fifty years ago a fire destroyed many of the trees growing on the appeal site at that time. Clearance by fire is a natural process within mature woodland and regenerating trees will normally thin out naturally over time. I agree that most of the trees that would need to be removed are younger and more closely spaced examples. These younger trees do support numerous bird species. During my site inspection I saw a significant number of blue tits, coal tits, great tits and long-tailed tits flying between trees on the appeal site and a bird feeder hung outside Tallpines. According to the appellant's birds and mammals survey, ten additional bird species are present either on the site or within a fifty-metre buffer zone around it (woodpigeon, goldcrest, willow warbler, wren, blackbird, robin, dunnock, chaffinch, goldfinch and siskin). I saw one ant nest, one drey and recent evidence of a red squirrel feeding on the site within what would be part of the curtilage of the proposed house. The birds and mammals survey identifies the presence of roe deer as well as red squirrel. In addition, the appellant indicated that he is aware of the predation of red squirrels by pine martens within the Nethy Bridge area.

8. The appellant proposes to provide compensatory planting on land within his ownership close by. Most of this land is also designated as woodland of ancient semi-natural origin and a significant percentage of it is under mature coniferous forest. The more open area, where compensatory planting could feasibly take place, contains different but equally important and valuable habitats. In my assessment, this area constitutes mature wet woodland, where areas of open water and exposed soil support bog cotton, reeds and heather. I saw relatively widely spaced mature coniferous trees growing on the drier parts.

9. I find that the area proposed for compensatory planting is not an appropriate site type for this purpose and that, rather than a nett public benefit being achieved, further irreversible harm to the natural environment would be caused.

10. I accept that many of the bird and mammal species present in and around the site would not be threatened by the proposal and that some may even thrive in a garden setting. However, there is a strong presumption against removing ancient semi-natural woodland and the proposed compensatory planting would be likely to destroy equally valuable mature wet woodland and its associated habitats. Furthermore, I consider that the economic benefits of the proposal in terms of providing local employment and supply chain opportunities would not be significant because most of them would be short-lived.

11. I find that the proposal would compromise the integrity of woodland of ancient semi-natural origin. I also find that the proposed compensatory planting would cause unacceptable harm to an area of mature wet woodland. It would not, therefore, accord with paragraph 3 of Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2015. Neither would it comply with the advice found in Scottish Planning Policy (Woodland) or the Scottish Government's Policy on Control of Woodland Removal.

12. The proposal would also fail to support the aims of the Abernethy National Nature Reserve, which include restoring the natural forest structure, with a special focus upon managing bog woodland. This adds to my concern about the effect of the proposal upon the natural environment.

13. Although red squirrel habitat would be disturbed, I am satisfied that the proposal would not have an adverse effect upon any European or Nationally Protected Species that could not be mitigated against. Consequently, I find that the proposal would accord with paragraph 4 of Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2015.

#### *Other Matters*

14. An occupant of Tallpines is concerned about the effect of the proposal upon localised flooding of the track leading from the main road to the appeal site and his home. During my site inspection I noted how wet the ground is at this location. However, this would not constitute grounds for refusal because I am satisfied that this matter could be addressed by attaching a surface water drainage condition and by requiring porous hard landscaping materials to be used.

15. I recognise the appellant's frustration about the way the application was decided. However, it is not uncommon for different decision-takers to come to different conclusions based upon the same evidence. Furthermore, Councillors are not bound to accept the advice given by their officers, provided that they have sound planning reasons for doing so. I am satisfied that my decision to allow the Council's late submissions has caused no injustice to the appellant because he has had an opportunity to comment upon them and I have taken his comments into account in reaching my decision.

#### *Overall Planning Balance*

16. I have found that the proposal would not have an adverse effect upon any European Protected Species that could not be mitigated against. However, I find this insufficient to outweigh the harm that the proposal would cause to the integrity of woodland of ancient semi-natural origin.

## Conclusion

17. I therefore conclude, for the reasons set out above, that the proposed development would not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

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

*Philip Barton*

Reporter