



Decision by Claire Milne, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2184
- Site address: land 470 metres south west of Kincardine Lodge, Street of Kincardine, Boat of Garten, PH24 3BS
- Appeal by Kincardine Estate Lodges against the decision by The Highland Council
- Application for planning permission 17/00125/FUL dated 16 January 2017 refused by notice dated 27 October 2017
- The development proposed: development of a single timber holiday chalet
- Date of site visit by Reporter: 20 March 2018

Date of appeal decision: 24 May 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. Having regard to the provisions of the development plan, the main issues in this appeal are:

- vehicle access
- impact on ancient woodland
- impact on protected species and habitats
- the need for the proposed development

2. The appeal site is covered by policies contained within the Cairngorms National Park Local Development Plan, 2015. The relevant policies are Policy 2: Supporting Economic Growth, Policy 3: Sustainable Design and Policy 4: Natural Heritage. Material considerations include Scottish Planning Policy and Scottish Government's Control of Woodland Removal Policy.

Vehicle access

3. Vehicle access is to be taken directly from the B970 road, via an existing field gateway. The intention is then to follow an existing farm track which runs alongside the field boundary for approximately 400 metres before crossing an existing culvert. Beyond



this point, it is proposed to utilise a woodland ride and existing track for vehicle access to the chalet.

4. The submitted Tree Protection Plan (dated August 2016) indicates that some 29 trees are to be removed to allow for 'upgrading' of the track surface. According to this plan, upgrading is proposed along most of the track length situated within the woodland. No excavation is proposed along parts of the track and some form of surface barrier is intended, although the total extent of works is not clear. In contrast, the position advanced in the planning and appeal statements is that 'no works' are proposed to the existing track, except minor repairs.

5. The appellant is keen to emphasise the low impact/ecological nature of the proposal. In response to the council's Forestry Officer consultation, further details were provided indicating that there would be 'minimal works' to the access track involving the filling of pot holes and a very minor scrape at tree group area G5. Within the response, it is also indicated that access to the chalet is intended via four-wheel drive vehicles (service) and walking.

6. The objections to the application highlight concerns regarding adequate visibility on entering and leaving the site, and with regard to heavy vehicles using the B970 road. The council's Transport Planning team make clear that no site visit has been undertaken and as the track will be private, their interests mainly relate to ensuring suitable access is secured with the public road and that sufficient car parking provision is provided. The appellant has provided further information confirming that the details requested by the council regarding these matters was submitted. Although the council states that this information was not provided, based on the committee report and the final decision of the council, it is my understanding that this matter is not a key concern for the roads authority, subject to suitable planning conditions.

7. At my site inspection I viewed the proposed access and its approach along the B970 road. While I note the local concerns raised, the plans provided appear to show visibility splays consistent with the council's guidance on Access to Single Houses and Small Housing Developments. Therefore I see no reason to disagree with the council on this particular issue providing suitable planning conditions can be introduced to deal with the matter.

8. With regard to the proposed access track, while the roads authority's remit does not extend beyond the site entrance, the access track is an important element of the proposal that I must assess.

9. Within the proposal, car parking for four spaces is proposed at the chalet. At my site inspection, along the route of the proposed access track, I noted the boggy and uneven ground in the area immediately to the north of the culvert at the entrance to the wooded area. I also noted the steep gradient (just beyond area G5) and leading into the ancient woodland. It is obvious to me that certain ground works would be needed to enable these sections of the access track to be accessible to motor vehicles, even in four wheel drive, and to enable construction vehicles to access the site.

10. Based on the information before me, I do not agree with the assertion made by the appellant that none or only minimal works would be required. I consider the need to upgrade the track to a reasonable standard is a very likely prospect which should have been included within the proposal. Currently, there are insufficient details provided which demonstrate how this would be achieved or whether the required works to the track would be appropriate for this countryside location and ancient woodland area. Consequently, I find the proposal contrary to part (j) of Policy 3 of the local development plan in that an appropriate means of access has not been demonstrated.

Impact on ancient woodland

11. The site falls within an area designated as ancient woodland which is listed as 'Long established semi-natural origin woodland' (LESNO1860). Part (3) of Policy 4 of the local development plan allows for development only where the objectives and overall integrity of the ancient woodland site would not be compromised or where proposed mitigation would be commensurate or of greater importance to the adverse effect on the qualities for which the area has been identified.

12. The appellant argues that the proposal would not compromise ancient woodland as the proposed tree removal relates primarily to plantation forestry, which will need to be felled in due course, and some smaller, broad-leaved trees of no conservation value. Compensatory planting proposed to enhance the long-term integrity of the woodland is also referred to.

13. The appellant has submitted a tree survey of the site, arboriculture assessment and method statement. Various best practice is to be deployed to protect retained trees, which is indicated could be secured by condition. A total of 48 woodland trees are proposed for removal to accommodate the chalet building and access track, the majority of which are indicated as young to semi-mature. An open area to the east of the site is referred to as to be managed for natural regeneration as compensation for the loss of trees. The council considers the matter of compensatory planting could be dealt with by condition.

14. Within the area of ancient semi-natural woodland, 19 mostly birch and rowan trees are to be removed in the area proposed for the construction of the chalet (area G4). These range from young to mature trees, although the exact number of each is not provided in the tree survey. Overall, these are surveyed as being of poor to fair overall condition. To the south of the chalet site, a further 29 trees are to be removed to give clearance for the access track, including 22 plantation Scots pine.

15. The design approach for the chalet building aims to minimise the development footprint. Nonetheless, along with the associated car parking area and driveway, the proposal would result in direct impacts on the ancient woodland requiring the removal of existing trees. At my site inspection I noted that some of the trees in this area are older or are in poor condition, however not all appeared to be so. In general, I would expect some long established trees to be present within an area of ancient woodland. The appellant's tree survey is not specific with regard to the condition of all the trees within this area but it appears that the proposal would remove a variety in terms of age and condition.

16. The area of ancient woodland where the chalet is proposed is relatively narrow at this point, sitting between the river and an open field, and existing forestry. I consider the extent of area proposed for removal for the chalet, at around 360 square metres, to be significant in terms of its relationship with the remaining woodland and with the open area that already exists immediately to the east of the site. The proposed removal of trees would further expose this central area and along with the presence of the proposed chalet would detract from the established and undisturbed nature of the ancient woodland.

17. The proposal indicates compensatory planting for an open area to the east of the site as proposed mitigation for the loss of woodland. Although Policy 4 allows for mitigation in certain circumstances, the details of what is proposed are not known at this stage. It is not clear therefore whether the proposal would be able to mitigate for the adverse effect on the qualities for which the ancient woodland has been identified. Accordingly, I do not consider that it would be appropriate to assume that a planning condition could secure replanting works of sufficient value to satisfy the requirements of Policy 4.

18. Furthermore, the unspecified details of the proposed works for the access track, where it features within the designation, could also raise implications for the ancient woodland. While I note the potential to protect retained trees from construction damage during the development phase, the total extent of works is not known. Given the importance ascribed to ancient semi-natural woodland, it would not be appropriate to leave such matters to be dealt with by condition. On the whole, I am not satisfied that the information submitted has sufficiently assessed the overall impact on the integrity of the ancient woodland with regard to this aspect.

19. Overall, I do not consider that it has been demonstrated that the proposal would not compromise the objectives or integrity of the ancient semi-natural woodland or that it would provide appropriate mitigation with regard to the loss of ancient woodland. Consequently, I find it contrary to part (3) of Policy 4.

Impact on protected species and habitats

20. The site lies to the south of River Spey Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC) and associated flood plain. As upland birchwood, the ancient woodland on the site is a priority woodland type in terms of the UK Biodiversity Action Plan Priority Habitat. Policy 4 of the local development plan gives protection to such interests and to habitats or species that may be adversely affected by development.

21. A Phase 1 Habitat Survey was undertaken which found no evidence of protected species within the site. Badger foraging evidence was identified close to the route of the access track and further activity was identified outwith the site. Two trees within the site were assessed as having the potential to support roosting bats. Riparian mammals including otters were recorded within two kilometres of the site and although the surrounding habitat would support such species, no such evidence was found on the site itself. The Ecological Appraisal concludes that identified habitats on the site are not considered to be of importance outwith the site level due to the extent of alternative suitable habitats in the local area.

22. The Ecological Appraisal refers to the access track construction within the woodland/woodland ride areas and the potential to encounter habitats suitable for reptiles. Existing trees are also likely to be used for roosting bats and nesting birds. While I accept that with normal practice there a number of site specific measures that can be employed to provide protection during construction, including appropriate timing, it remains unclear as to what actual track works are proposed and the potential impacts this might have. Given the protection afforded to such species and their habitats, I do not consider that the proposal has adequately demonstrated that it would not have an adverse impacts on such interests. Therefore I find it contrary to parts (4), (5) and (6) of Policy 4 of the local development plan.

23. The council has highlighted that there is an area of bog habitat to the east of the site which would be affected by the proposed compensatory planting. Despite raising concerns regarding this, the council was unable to specify its ecological characteristics or what adverse impacts might arise. The appellant describes the proposed compensatory area as not containing features which would identify it as important bog habitat and the area of concern indicated by the council is likely to be some 50 metres away.

24. While I note these respective positions, as indicated previously, the details of the compensatory planting are not known at this stage. I also note that the actual area to be chosen and the type of planting is indicated as a matter to be dealt with by condition. Based on the information before me, I do not consider that the development of the chalet would have an adverse effect upon any important bog habitat.

Need for the proposed development

25. The appellant describes the chalet proposal as targeted at the extended family and group market, for long weekend and out of season breaks. It is proposed to share certain services with an existing chalet, Kincardine Lodge, to the south and to offer a range of rural activities such as fishing and walking. Based on customer feedback and market research, the appellant's business case highlights the desire to extend the range and quality of facilities for self-catering accommodation to help grow the tourism offering in the Cairngorms.

26. I accept that the proposal would support economic growth within the national park through providing tourism accommodation facilities, and is likely to make a positive contribution to the experience of visitors and extend the core tourist season. In this respect it meets the initial requirements of Policy 2 of the local development plan. However, this policy also requires a development to have no adverse environmental impacts. Given my concerns expressed above regarding the overall impacts on ancient woodland and protected species and habitats, I do not consider that the proposal fully meets this test. Therefore, I find it contrary to part (2) of Policy 2.

Material considerations

27. The council's reasons for refusal refer to Scottish Government's Control of Woodland Removal Policy. For the purposes of this policy, 'woodland' is defined as a minimum 0.1 hectare. Given the policy presumption in favour of protecting woodland, removal is only permitted where it would achieve significant and clearly defined additional public benefits

including social, economic or environmental benefits. In appropriate cases, compensatory planting may form part of the balance.

28. The council indicates that the total extent of woodland removal is around 0.1 hectare while the appellant calculates it at 604 square metres. Although the reasons for refusal include the lack of any demonstrable public benefits, in response to my request for information, the council refers to the proposed economic and tourism benefits as being sufficient to offset the impact on the trees. With regard to whether the proposal is contrary to the Control of Woodland Removal Policy, based on the evidence before me, my own view is that in this instance the indicated scale of the proposal is likely to fall below the threshold for such matters to be considered relevant.

29. Scottish Planning Policy considers ancient semi-natural woodland to be an irreplaceable resource. It indicates that ancient semi-natural woodland, along with other types of woodland, should be protected from adverse impacts resulting from development particularly where trees provide a high nature conservation or landscape value. Where appropriate, opportunities should be taken to plant native trees and improve the connectivity between woodland habitats.

30. At paragraph 218 of Scottish Planning Policy, there is a reference to achieving public benefits and providing compensatory planting. However, my reading of the context for this relates directly to the Control of Woodland Removal Policy, which for the reasons indicated above I do not consider relevant to this case.

31. In my reasoning set out above, I have considered the development proposal's impact on the ancient semi-natural woodland. Overall, I conclude that it would have an adverse impact on the ancient woodland which would not be supported by Scottish Planning Policy.

Other Matters

32. Reference is made to a recent appeal dismissal (PPA-270-2180) within the national park area, which the council highlights as having similarities. The determining issue in that case concerned the integrity of the ancient woodland and the acceptability of compensatory planting. While I note these general similarities, it is unlikely that all the matters raised were identical. The proposal in that case was for residential development and the reporter appeared able to give full consideration to the proposals for compensatory planting. While the decision in that case reached a similar conclusion, I am not bound by the reasoning cited. In this instance I give particular importance to Scottish Planning Policy as a material consideration which identifies ancient semi-natural woodland as an irreplaceable resource that should be protected from adverse impacts resulting from development.

Conclusions

33. Although the proposal would support economic growth and the important leisure and tourism industry in the local area, I do not consider that it would provide a suitable means of access, provide protection for protected species and habitats, or provide adequate measures to ensure the integrity of ancient semi-natural woodland. These are also important aspects.

34. I therefore conclude, for the reasons set out above, that the proposed development does 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. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Claire Milne
Reporter