



Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2205
- Site address: Nordman Croft, field no. 4, Artafallie, North Kessock, Inverness IV1 1XD
- Appeal by Mr Dietrich Pannwitz against the decision by the Highland Council
- Application for planning permission in principle 18/03106/PIP dated 5 July 2018 refused by notice dated 22 October 2018
- The development proposed: erection of dwellinghouse to be occupied in association with an existing rural business
- Date of site visit by Reporter: 19 February 2019

Date of appeal decision: 4 March 2019

Decision

I dismiss the appeal and refuse planning permission in principle.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan consists of the Highland-wide Local Development Plan, which was adopted in 2012, and the Inner Moray Firth Local Development Plan, which was adopted in 2015. Having regard to the development plan, the main issues in this appeal are whether the proposed house is “essential” and whether the position of the proposed house is appropriate.

Policy 35: Housing in the Countryside (Hinterland areas)

2. In the Highland-wide Local Development Plan, policy 35: ‘Housing in the Countryside (Hinterland areas)’ says that the Council will presume against housing in the open countryside of the hinterlands around towns as defined on the Proposals Map. The appeal site is in an open countryside location within the hinterland area associated with Inverness.

3. Policy 35 says that exceptions to the presumption against housing will be made in certain circumstances. Of the eight circumstances, I find that two are relevant to the appellant’s proposal:

a house is essential for land management or family purposes related to the management of the land; and



housing is essential in association with an existing or new rural business.

4. Nordman Croft comprises two parcels of land. The larger parcel is 2.07 hectares in extent, the smaller one is 0.48 hectare in extent. The south-west side of Nordman Croft adjoins part of trunk road A9. The south-east side adjoins part of the B9161 road. This road goes from the A9 to Munloch, beyond which is Fortrose. The east side adjoins the curtilage of Toll House. The north-east side adjoins part of a minor road that runs westwards from the B9161. Access to the land is from this road.
5. The 0.48 hectare parcel is a narrow strip on the north-west side of Nordman Croft. A watercourse runs through this strip and there are mature trees. It adjoins a short cul-de-sac that gives access to a number of houses in a wooded setting.
6. In April 2010, 9,000 Christmas trees were planted on 1.54 hectares of the 2.07 hectares parcel. These trees are on the south-west three-quarters of the land – they adjoin the A9 and B9161 frontages.
7. In the north-eastern quarter of the site there is an agricultural-style shed, 15 metres wide and 30 metres long. Most of the shed is used for processing and storage of firewood. Part of the shed provides shelter for a small number of cattle. The cattle have access to a paddock between the shed and the minor road. There is also an area of grass adjoining the eastern boundary. Hardstanding beside the shed is used for vehicles and for storage of timber awaiting processing for firewood.
8. The appellant and his partner have four business activities: consultancy, firewood, Christmas trees and cattle rearing.
9. The proposal to build a house is supported by an 'Operational Needs Assessment'. I note that the calculation of annual hours of work in the assessment does not include time spent on the consultancy business. I find that the consultancy activity does not require to be located at the appeal site, although it would be part of the proposed mix of activities run from the proposed house.
10. The existing firewood business is based on supplying large loads (three cubic metres or multiples of this amount) to customers. The expansion envisaged is dependent on sales in smaller amounts to passing trade. Sales of smaller amounts would have a larger profit margin. The 'Operational Needs Assessment' says: 'This type of purchase would be less seasonal than bulk purchase as passers might pick up small quantities as an impulse buy'. This would require someone to be present on site. The 'Operational Needs Assessment' identifies a need for someone to be on site for at least three hours per day, six days per week.
11. I find no evidence that the proposed expansion of the firewood business has been market tested for a limited period to see what sales are in fact likely to be made to passers-by. Nor do the submissions include any appraisal of whether demand for firewood is likely to alter in future – for example, whether concerns about air pollution or greenhouse gas emissions might have a depressing effect.

12. Assuming that the firewood business could be expanded as envisaged, I find that this would require someone to be present on site for a relatively limited number of hours per day. I see no reason why this could not be achieved by having on the site a cabin to provide the necessary accommodation.

13. Submissions make it clear that Christmas trees require a great deal of attention between the time they are planted and the time when they are harvested. Pest and disease infestations need to be dealt with as soon as they occur. Weeds must be controlled. Pruning, shearing and leader management must be done swiftly and at just the right time. I note all this and the comment about the need to live on site that is included in the British Christmas Tree Growers' Association advisory note.

14. In relation to the appellant's Christmas trees, the labour requirement table in the 'Operational Needs Assessment' lists five year-round activities. These are: bud nip; shaping and pruning; fertilising; spraying; and strimming. These require 394 hours per annum. On the basis that a full-time labour unit equates to 1,900 hours work per annum, 394 hours gives a labour requirement of 0.21 of a labour unit.

15. The drawing entitled 'Re-design showing mitigation measures' shows a strip of ground within that part of the site next to the A9 with the text: 'existing conifers along the roadside have been interplanted with broadleaves and will mature to screen views from the A9 corridor'. From the drawing, I note that the inner boundary of the strip is about 15 metres in from the site boundary. The drawing does not show the whole of this strip. On the assumption that it extends along the whole of the A9 frontage, its length would be some 120 metres and its area 0.18 hectare.

16. During my site visit, I noted that some trees close to the A9 appeared to have been adversely affected by salt spray or some other pollution from the road and its traffic. Most of the Christmas trees in the proposed interplanted strip appeared to be successful. On the other hand, within a central part of the Christmas tree area, trees had failed to grow because of poor soil conditions.

17. If the interplanted strip is not to be used for Christmas tree production and with the proposed house also occupying Christmas tree ground (0.15 hectare), the area left for Christmas tree production would be reduced by 0.33 hectare. This would be a reduction of about 20% in terms of area. This reduction does not appear to have been taken into account in the 'Operational Needs Assessment'.

18. The remaining Christmas tree area after removal of the 0.33 hectare would include the area of poor soil. It is proposed that manure from the proposed cattle rearing business would be used to improve soil condition. If this is successful, it would go some way to compensate for the 20% reduction in area.

19. The labour requirement also lists four seasonal activities during the period leading up to Christmas. These activities require 952 hours.

20. From the foregoing, I find that, throughout the year, the Christmas trees need to be inspected frequently. Even if there is a need for daily inspection, I find that this may be done without need for someone to be resident on the site. Year-round activity amounts to

0.21 of a labour unit. I find that this level of activity does not justify constant on-site presence. The greatest need for labour is within the relatively short period leading up to Christmas. I find that it is not essential for someone to be resident on-site during this period. I see no reason why staff needed to serve customers during this period could not be based in a cabin on the site.

21. Regarding cattle rearing, the 'Operational Needs Assessment' refers to three cows being wintered at the shed at present. Summer grazing is available elsewhere. Calves from the cows have been sold on. Forty beef cattle could be kept in about one half of the shed. As already noted, manure from the cattle would be used to improve soil quality for growing the Christmas trees.

22. I note that the proposed cattle business would be on a far larger scale than the present relatively small operation. The 'Operational needs assessment', with the attached heifer margins document, envisages a profitable outcome.

23. The appellant draws attention to a letter of support which refers to the present being "a time of depleting cattle numbers, particularly in the Highlands". I also note that one of the other letters of support refers to "the current declines in animal numbers in the Highlands".

24. No reason is given for the decline in cattle numbers. If it is due to difficult market conditions, there must be some uncertainty as to how far a new cattle-rearing business, such as that proposed by the appellant, would be successful.

25. The 'Operational needs assessment' says that the ability to provide on-site sales of Christmas trees, firewood and kindlers for collection would also permit farm gate sales of home-grown beef to an established customer base. As indicated above, I find that the on-site staff presence required for expansion of the Christmas tree and firewood businesses could be facilitated without need to have a house on the site. This finding thus applies also to permitting beef sales.

26. The 'Operational Needs Assessment' says: "With livestock housing within the shed and some calving it would be preferable to be close at hand for ease of routine checks which would benefit animal welfare". I agree with this. "Close at hand" does not necessarily mean living on the site itself.

27. The 'Operational Needs Assessment' explains that the appellant and his partner live in Inverness. This detracts from their ability to be on site to capture passing trade. It increases carbon footprint. Commuting equates to 3,000 miles per year and 300 lost work hours. The assessment, in section 1, says: "The main issue restricting development of all these enterprises is the inefficient use of time spent travelling".

28. I find that the considerations in the preceding paragraphs point to the desirability of the appellant and his partner living close to, but not necessarily on, Nordman Croft.

29. The 'Operational Needs Assessment' concludes that it is "essential for this house to be built at Nordman Croft". This is because "There is no potential to use existing

accommodation at this location, utilise any existing planning consents or develop a site within a defined settlement development area”.

30. I note that paragraph 6.40 in the ‘Housing in the Countryside and Siting and Design’ supplementary guidance includes reference to “the potential to use existing accommodation in the area”. I also note what is said in paragraph 4.28 of the grounds of appeal:

Given the rural location of the site, current family arrangement/ location and subsequent housing markets, it is not possible as an economically viable option to potentially relocate to any existing accommodation that may exist within the area, as such opportunities are limited given the on-site requirements of the business.

31. On the day of my site visit, I took the opportunity to visit Charleston and North Kessock. I noted that this community was within about two kilometres of the appeal site and that it took about five minutes to drive from the community to the appeal site. New houses were for sale at Charleston. There was a variety of other houses in the community. This all appeared to offer “the potential to use existing accommodation in the area”.

32. The appellant states that proximity to the main trunk route from Inverness increases the risk of theft and vandalism. There is no suggestion that, up to now, Nordman Croft has been subject to theft or vandalism. If business activity on the site were to be intensified, I see no reason why security could not be upgraded commensurately to deter criminals.

33. My overall conclusion is that the proposed house is not “essential” in terms of policy 35 in relation to each of the individual business activities. I have also considered whether the business activities in combination alter this conclusion. I find that they do not. As the house is not essential, the presumption against housing in the open countryside applies. The proposed house would be contrary to this presumption.

Policy 28: Sustainable Design

34. In the Highland-wide Local Development Plan, policy 28 addresses ‘Sustainable Design’. Among other things, policy 28 says that proposed developments will be assessed on the extent to which they:

demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environment and in making use of appropriate materials.

The present application is in principle, so matters of design and materials are not relevant.

35. The council contends that the proposed house would not be sensitively sited. It would be prominently located on rising land close to the A9 trunk road. It would be set back and detached from the shed. It would not respect the established settlement pattern of houses with frontages to minor roads. It would not be in keeping with local character.

36. I note that the appellant would have no objection to building a single-storey dwelling.

37. During my site visit, I saw that there is a downwards slope from the A9. The ground on which the proposed house would be built is thus at a slightly lower level than the A9. Christmas trees near to the perimeter of the appellant's ground are already having some screening effect in relation to views from the A9.

38. I find that permission for the proposed house could be subject to a condition requiring approval of details of interplanting within the whole of the 0.18 hectare strip adjacent to the A9. I find that suitable interplanting and restricting the height of the house to a single storey would adequately address any concern about prominence in relation to the A9.

39. From my site visit, I find that the proposed house would be particularly visible from the B9161 to the north-east of the site. From this direction, the house would be seen to be set back from the shed. It would be on higher ground than the ground on which the shed is built. It would be backgrounded by mature trees, but the overall effect, taking into account the position of the shed and the position of Toll House, would be disjointed.

40. I note the appellant's explanation as to disadvantages of locating the proposed house elsewhere within Nordman Croft and reference to other houses that have recently been built in the surrounding area, but my conclusion is that the proposed house would not be sensitively sited because of the poor relationship with the pattern set by the shed and by Toll House. The proposed house would therefore not accord with policy 28.

Development plan – conclusion

41. My conclusion is that the proposed house would not accord with the development plan. Planning permission should be refused unless there are other material considerations that would justify approval.

National policy

42. The appellant refers to Scotland's Economic Strategy 2015. I note that the National Planning Framework (paragraph 2.2) says that the Scottish Government Economic Strategy aims to stimulate economic activity and investment across all of Scotland's communities.

43. I also note that paragraph 2.26 of the National Planning Framework is relevant. It includes:

We do not wish to see development in our rural areas unnecessarily constrained. There will be a continuing need for new housing – we expect more people to live and work in Scotland's rural areas as digital links and opportunities for remote working and new enterprises continue to grow. The Scottish Planning Policy sets out a framework for planning for rural housing which reflects the varying characteristics and pressures of rural communities. It highlights that careful planning is required to manage demand in our most accessible countryside around towns and cities.

44. I find that the appeal site is within an area that may be described as “our most accessible countryside around towns and cities”. It is thus in an area where careful planning is required.

45. I note that Scottish Planning Policy (paragraph 93) says that the planning system should promote business development that increases economic activity while safeguarding and enhancing the natural and built environments.

46. With reference to promoting rural development, Scottish Planning Policy (paragraph 81) says:

In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision-making should generally:

- guide most new development to locations within or adjacent to settlements; and
- set out the circumstances in which new housing outwith settlements may be appropriate, avoiding use of occupancy restrictions.

47. I find that the appeal site is within a rural area that is “accessible” and to which paragraph 81 of Scottish Planning Policy applies.

48. My conclusion is that support for business growth contained in national policy is not unconditional and that this is reflected in the development plan, particularly policy 35 of the Highland-wide Local Development Plan.

49. Scottish Planning Policy (page 9) introduces a presumption in favour of development that contributes to sustainable development. This presumption does not change the statutory status of the development plan, but it is to be a material consideration (paragraph 32).

50. I find that the presumption in favour of development that contributes to sustainable development does not outweigh the conflict with the development plan. This is chiefly because building a house on the appeal site is not essential to growth of the appellant’s businesses.

51. I have noted the appellant’s references to Planning Advice Note 73. I find that this advice, which was published in 2005, does not detract from the guidance contained in the National Planning Framework and Scottish Planning Policy.

52. My conclusion is that national policy is not a material consideration that justifies approval of the proposed house.

Effect on wildlife

53. The one representation that did not support the proposed development expressed concern about the location of the house within Nordman Croft and possible adverse effect on wildlife within the 0.48 hectare parcel.

54. I note that the application drawings indicate a possible position of the proposed house, with a distance of about ten metres between the house and the boundary of the 0.48 parcel. Taking this into account along with what I observed during my site visit, I do not find it likely that there would be a significantly adverse effect on wildlife.

Other matters

55. I have carefully considered all the other matters that have been raised, including the consultation replies received by the council, the letters in support of the proposed house and the use of off-site grazing land. None overrides my foregoing findings and conclusions.

Overall conclusion

56. My overall conclusion is that the proposed development does not accord with the relevant provisions of the development plan and that there is no material consideration which would justify granting planning permission in the face of this conflict.

R W Maslin

Reporter