

Planning and Environmental Appeals Division

Appeal Decision Notice

T: 0300 244 6668

E: dpea@gov.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot

Decision by Stuart West, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2236
- Site address: High View, Lower Muckovie, Inshes, Inverness, IV2 5BB
- Appeal by Brian Rizza against the decision by Highland Council
- Application for planning permission 20/01803/FUL dated 14 May 2020 refused by notice dated 24 August 2020
- The development proposed: Retrospective application for the erection of garage and supportive gabion wall with associated works
- Date of site visit by Reporter: 01 April 2021

Date of appeal decision: 14 June 2021

Decision

I dismiss the appeal and refuse planning permission.

A claim for an award of expenses against the council has been submitted on behalf of the appellant. This is subject of a separate decision notice.

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 adopted Highland-Wide Local Development Plan (2012) (LDP), the adopted Inner Moray Firth Local Development Plan (2015) (IMFLDP), and adopted supplementary guidance. No specific policies from the IMFLDP have been brought to my attention in relation to the matter.

2. Having regard to the provisions of the development plan the main issues in this appeal are:

- siting and design; and
- flood risk and environmental impacts.

I consider each of these matters in turn below.

Siting and design

3. LDP Policy 28: Sustainable Design requires that proposed developments demonstrate sensitive siting and high quality design in keeping with local character and the natural environment. The policy further states that proposed developments will be

assessed on the extent to which they impact on freshwater systems, scenery and landscape. The policy is clear that developments which are significantly detrimental in terms of the prescribed criteria will not accord with the development plan.

4. Similarly, LDP Policy 36: Development in the Wider Countryside states that, outwith Settlement Development Areas, development proposals will be assessed for the extent to which they are acceptable in terms of siting and design. The adopted Housing in the Countryside and Siting and Design Supplementary Guidance (HCSD) gives further information on how development proposals will be assessed against LDP policy 36.

5. The guidance within the HCSD focuses primarily on the siting and design of new houses. The proposed garage and associated gabion wall would be situated upon a 6 metre strip of land between the curtilage of the existing dwelling and the Scretan Burn.

6. Any extension to the curtilage of the dwelling to accommodate the proposed garage and gabion wall should follow the guidance set out within the HCSD for new residential developments. Section 5.2 of the guidance states that proposals will only be supported when they do not impact detrimentally on natural heritage; and where there has been appropriate consideration of flood risk. I give further consideration to these matters below.

7. The council contends that the proposal is contrary to the HCSD requirement that engineered platforms be avoided and that buildings should be designed to fit into the landscape. I note that section 9.7 of the HCSD states that building on artificial mounds or platforms makes development unduly prominent with significant underbuilding by increasing the visible mass of the building, resulting in new builds often sitting up in the skyline and having a detrimental effect on the surrounding landscape.

8. I find that the development has not resulted in the building having an increased visible mass or in it sitting up in the skyline due to its relatively obscured location. Given that the proposed garage is already in situ, and that the land-raising has already taken place, I was able to observe the development during my site inspection. I am satisfied that the impacts on medium- to long-distance views towards the appeal site are minor and I do not agree with the council that section 9.7 of the HCSD is directly relevant to the proposal.

9. The gabion wall and the formation of the infilled area would have a direct impact on the physical character of the site because the natural form of the land would be lost beneath a hard, level, engineered surface. The strip of land between the Scretan Burn and the approved garden ground of the nearby dwelling has been identified as a functional riparian buffer. I find that such a fundamental change to the character of the site would not represent sensitive siting and design.

10. I am therefore satisfied that the proposal does not accord with LDP policies 28 and 36, or the adopted HCSD insofar as they relate to the siting of the proposed development.

Flood risk and environmental impact

11. The council says “the site lies within the Pluvial Flood Medium Risk area”. LDP Policy 64: Flood Risk requires that development proposals should avoid areas susceptible to flooding and that they should promote sustainable flood management. Policy 64 states that development proposals within medium flood risk areas will need to

demonstrate compliance with Scottish Planning Policy (SPP). Whilst paragraph 257 of SPP is clear that small-scale extensions are outwith the scope of the policy principles set out at Paragraph 255, paragraph 265 states that land raising should only be considered in exceptional circumstances.

12. Within its email of 31 January 2019 SEPA stated that if this were a planning application for a new proposal then it would have objected and sought alternative works that did not result in a loss of capacity to the watercourse. The appellant has submitted a channel capacity assessment with proposed mitigation steps to address the adverse effects on flood levels resulting from the raising of ground and the installation of the gabion wall. SEPA removed its objection to the development on flood risk grounds in response to the assessment and the mitigation measures proposed.

13. There has been no justification communicated by the appellant for not using natural methods of flood management in accordance with LDP Policy 64. Furthermore, I have not been presented with any evidence to demonstrate that there are exceptional circumstances to justify the land raising on this occasion. I give further consideration to the retrospective nature of the development and the potential impacts of reinstating the land below.

14. Whilst it may be possible that the impacts on flood risk outside the site could be mitigated through the proposed compensatory measures proposed by the appellant, for the reasons highlighted above, I do not find that the proposed development promotes sustainable flood management. Neither do I find that the proposed development would accord with the requirements of paragraph 256 of SPP. I am therefore satisfied that the proposed development would be contrary to LDP Policy 64.

15. Section 10 of the adopted Flood Risk & Drainage Impact Assessment Supplementary Guidance (FRDIA) states that the council will seek a minimum buffer strip of 6 metres between the top of the bank of any body of water and any proposed new development. The guidance is clear that there should be no encroachment into this riparian strip during any stage of the development and ground levels should be maintained at pre-development levels. The council has advised that the 6 metre buffer is the minimum distance recommended by SEPA in its guidance on flood management and its retention was required by the original planning permission for the adjacent dwelling.

16. FRDIA states that the purpose of the riparian strip is to allow watercourses room to move naturally; to allow access to the watercourse for the purposes of watercourse assessment and maintenance; to aid water and ecological quality; and to ensure bank stability. The council's Flood Team objected to the retrospective development proposal on the basis that the garage and gabion wall have been built within the riparian strip and this was subsequently cited as a reason for refusal in the council's decision notice.

17. The establishment and preservation of riparian buffer strips is an objective of the adopted FRDIA and there are no criteria set out within the supplementary guidance that would allow for the removal of such a feature, regardless of circumstances or any proposed mitigation. This policy position aligns with the precautionary approach to managing flood risk and drainage set out within SPP, and toward its policy principles regarding the protection of the natural environment at paragraphs 194, 195 and 203.

18. The Envirocentre letter of 20 November 2020 considers the aims and objectives of riparian strips stating that the land on the opposite side of the burn is under the appellant's control and is capable of providing access to the burn in perpetuity. The appellant contends that the intended greenbank mitigation measures set out within the channel capacity assessment demonstrate that the burn would have sufficient room to move naturally and at the same rate as prior to the development, whilst maintaining ecological connectivity along the channel and on the opposite bank. In considering the wider aims and objectives of riparian strips as set out within the FRDIA, I am satisfied that the gabion wall would secure bank stability within the appeal site itself and that there would be no adverse impacts on water quality.

19. As the FRDIA requires that a buffer strip is maintained on both banks of a watercourse, and states that the strip must not form part of any garden ground, the proposal would technically be contrary to the council's adopted FRDIA supplementary guidance. However, I am satisfied that the mitigation measures proposed by the appellant would serve to minimise impacts on the aims and objectives of riparian strips set out within the FRDIA.

20. The mitigation measures proposed would involve works to the land on the opposite side of the burn to ensure that channel capacity is maintained and to enable the burn to move naturally. No CAR licence has been granted for the works as proposed, which would put me in difficulty with regards to requiring the works by planning condition. However, given that SEPA has withdrawn its objection to the proposed development, I acknowledge that it is likely that the proposed mitigation measures could be licenced even though I cannot be certain that a licence would be granted.

Conclusions on the development plan

21. For the reasons outlined above, I am satisfied that the proposed development would not accord with LDP policies 28, 36 and 64, or the council's adopted supplementary guidance documents on both siting and design and flood risk and drainage impact assessments. I therefore find that the proposed development would be contrary to the development plan.

Material Considerations

22. The appellant contends that the proposed development is consistent with the aims of paragraph 254 of SPP, which states that planning can play an important part in reducing the vulnerability of existing and future development to flooding, as the works would improve the on-site situation along the banks of the Scretan Burn. However, no evidence has been presented to convince me that the adjacent dwelling is vulnerable to flooding that would necessitate the proposed development.

23. In determining this appeal, I must consider the merits of the case as proposed. The potential short-term impacts of reversing the unauthorised work, and the financial costs associated with restoring the land, are not justification for the approval of the development. This appeal relates solely to the proposed development with the baseline for considering the proposal being the state of the land before any development was carried out. The effects of removing the development are irrelevant to the consideration of the case. Such

effects are a matter for the planning authority to consider in deciding what, if any, enforcement action to take in respect of the unauthorised development.

24. The appellant has provided photographs of an existing gabion wall positioned upstream from the appeal site that he contends is similar in nature to the proposed development. During my site inspection I viewed the development referred to and, despite the wall being constructed adjacent to the burn, I do not find it to be directly comparable to the proposal due to the clear buffer zone between the gabion wall and the curtilage of the adjacent properties. Furthermore, given the age of the intervention, I am satisfied that the gabion wall was developed through a previous policy framework.

25. Whilst the actual impact of the proposed development on the channel capacity of the Scretan Burn and the integrity of the riparian strip may be relatively minor, the policy of having a riparian buffer strip could become ineffective if such individual developments are permitted without any particular justification to demonstrate that they are a truly exceptional case. I accept that the mitigation measures proposed by the appellant would resolve many of the issues regarding development within the riparian strip itself. I do not accept that the proposal itself is a unique example of an appropriate development within a flood-sensitive location and I do not find that any exceptional circumstances have been evidenced to justify the raising of land within a flood risk area.

Conclusion

26. 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.

Stuart West
Reporter