



Appeal Decision Notice

Decision by Euan McLaughlin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2262
- Site address: Land 25M Nw of Rowanlea, Cabrich, Kirkhill, IV5 7PH
- Appeal by Michael Cameron against the decision by Highland Council to grant planning permission reference 21/03970/FUL dated 20 December 2021 subject to conditions.
- The development proposed: Erection of a house
- The condition appealed against is: 8. Prior to the commencement of development, two passing places shall be provided by the developer and at their expense, on the U1758 Cabrich Road, to the satisfaction of the Planning Authority in consultation with the Roads Authority. For the avoidance of doubt, the proposals shall be informed by the requirements set out in Section 5.3.6 of the Council's "Roads and Transport Guidelines for New Developments". (Reason: In order to mitigate the impact of the development on the local road network, and in the interests of road safety.)
- Date of site visit by Reporter: 05 April 2022

Date of appeal decision: 20 May 2022

Decision

I allow the appeal and vary the terms of the planning permission by deleting condition 8.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this case consists of the Highland Wide Local Development Plan (2012) and the Inner Moray Firth Local Development Plan (2015). Parties have not drawn any policies from the Inner Moray Firth Local Development Plan to my attention.
2. The determining issue in this appeal is whether condition 8 meets the tests set out in Circular 4/1998: The use of conditions in planning permissions. In this case I find four of these tests are relevant, whether it is necessary to require these road improvements in order to mitigate the impact of the development on the local road network, whether such actions are relevant to the development permitted and whether the condition itself is both precise and enforceable.
3. The appeal site is served by an unadopted private track which links onto the end of the U1758 Cabrich Road, an adopted single-track road. The U1758 currently serves approximately 20 dwellinghouses. Planning permission has been granted for a detached dwellinghouse and condition 8 requires the provision of two new passing places on the U1758. The reason being twofold, firstly in order to mitigate the impact of the development on the local road network, and secondly in the interests of road safety.

4. It is clear from the representations received during the processing of the application and the one submitted in connection with this appeal that the local residents have concerns regarding the safety of the U1758 and its ability to accommodate additional traffic movements. Consultation response from the council's Transport Planning Team identifies that the "new house will generate additional vehicle movements on the existing U1758 Cabrich Road" which "has limited formal locations for vehicles to pass." It is recommended that proposals are required "for improving the opportunities for vehicles to pass each other on the existing U1758 Cabrich Road." The council in its assessment has not identified any other safety concerns with the existing road.
5. The council draws my attention to Highland Wide Local Development Plan Policy 56: Travel and its expectation that new development would address any road safety shortcomings. On my reading of the policy, I find it sets a broad test but does not offer any particular standards or thresholds for the development to meet. Those standards are however included in non-statutory guidance The Roads Transport Guidelines for New Development (2013). The design standard for a single-track road requires inter-visible passing places that are, where possible, a maximum distance of 150 metres apart. However, the guidelines do not appear to place any limit on the number of houses that can be served by a single-track road.
6. My site visit confirms the council's assessment that the U1758 has limited formal locations for vehicles to pass, and that due to the narrow nature and limited forward visibility along parts of the road traffic speeds would be around 30mph. The passing opportunities that are provided at entrances to private driveways or where the road has been widened around the sharper bends have not been constructed in line with the guidelines referred to above.
7. Notwithstanding the current condition of the road, I am advised that planning permission for a house has been granted twice at the appeal site, first in 2015 and renewed in 2018, and also at another site on the U1758 in 2021. Those permissions do not include any requirement to provide passing places on the U1758. Yet the same development plan policy and guidelines referred to by the council applied when those decisions were made.
8. There is nothing in the nature or scope of the proposed development that indicates that there would be additional traffic generated by the current proposals over that of the extant permission for a house at this site. Consequently, I find there would be no additional pressure on the existing road network as a result. Whilst there are no formal passing places on the U1738 this is an existing situation and the council has not been able to demonstrate why it is this proposal, as opposed to the previous permissions here or elsewhere on the U1738, that triggers the need for the required improvements.
9. Ultimately, Scottish Planning Policy identifies that a condition should only be imposed where necessary and Circular 4/1998 advises that a condition should not be imposed on a new development simply to meet a need that already exists. Due to the lack of direct correlation between the development applied for, and the need for two passing places I find the condition appears to be seeking to address an existing defect with the road design. On this basis, I do not consider that condition 8 is necessary or reasonably relates to the development being permitted and therefore the tests of necessity and relevance to the development are not met.
10. Despite my findings above I have still considered whether the condition is precise. Circular 4/1998 advises against the use of the phrase "to satisfaction of the planning authority" as it is not possible for the developer to know when such a point would be

reached. Furthermore, the condition relies on the aforementioned guidelines, and, although these are the correct source for passing place design standards there are two possible options for a standard passing place. The condition does not specify which one. Both these elements indicate a lack of precision in the drafting of the condition.

11. Where there is this level of uncertainty as to what is required of the developer in constructing the passing places, I find the condition as drafted would not be enforceable.

12. Overall, I find that condition 8 does not meet four of the tests set out in Circular 4/1998 of necessity, relevance to the development, precision, and enforceability. Therefore, its imposition cannot be considered in conformity with the policy of Scottish Ministers and consequently it should be deleted.

Euan McLaughlin

Reporter