



## Appeal Decision Notice

---

Decision by Ailie Callan, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2285
- Site address: Land 30M SW of Ocala, Oldwick, Wick, KW1 5TL
- Appeal by Mr Colin Smith against the decision by the Highland Council
- Application for planning permission 21/05563/FUL dated 29 November 2021 refused by notice dated 12 December 2022
- The development proposed: erection of a block of single storey semi-detached houses
- Date of site visit by Reporter: 11 May 2023

Date of appeal decision: 21 July 2023

---

### 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. The development plan for this site is comprised of National Planning Framework 4 (NPF4), adopted 13 February 2023, the Highland-wide Local Development Plan (HWLDP), adopted 2012, and its associated supplementary guidance, and the Caithness and Sutherland Local Development Plan (CSLDP), adopted 2018 and its associated supplementary guidance.
2. Having regard to the development plan, the key matters for consideration in this appeal are the principle of development for housing in this location, whether the site is at risk of flooding or could create flood risk outwith the site, and whether the access to the site is adequate.
3. I consider the most relevant development plan policies for this case are policy 17 (rural homes) of NPF4, which outlines where new homes in rural areas would be supported, and policy 36 (development in the wider countryside) of HWLDP, which contains a checklist of considerations to ensure proposed development does not harm the character of rural areas.
4. In my view, there is an incompatibility between policy 17 of NPF4 and policy 36 of HWLDP with regards to the siting of new rural homes outwith settlement boundaries. Where policy 36 allows for a more general support regarding housing in the wider countryside, policy 17 is more prescriptive and requires new homes in rural areas to be on a site allocated for housing within the LDP or to meet other specific criteria. Section 24(3) of the Town and Country Planning (Scotland) Act 1997 as amended provides that: "In the event of any incompatibility between the provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail". As

NPF4 was adopted after the decision was made on the original application, submissions have been sought from the appellant and the council with regards to the extent to which policy 17 of NPF4 affected the appeal proposal, and any tensions or incompatibilities between policy 17 and the LDPs.

5. Policies 13 (sustainable transport) and 22 (flood risk and water management) of NPF4 and policies 56 (travel) and 64 (flood risk) of the HWLDP are also relevant to my consideration of this case.

#### Housing in the countryside

6. The appeal site lies around 65 metres south of the defined Wick settlement development area and is adjacent to three dwellinghouses. It is located within the identified wider countryside in the CSLDP and is not allocated for housing. The council indicated that policies 28, 29 and 36 of HWLDP may be incompatible with policy 17 of NPF4, with the HWLDP policies less specific or restrictive than the NPF4 policy. I agree that NPF4 policy 17 is more restrictive than the relevant provisions of the HWLDP, so in line with section 24 (3) of the Act, I have therefore considered the proposal against policy 17 of NPF4 as this forms the later document.

7. Policy 17 of NPF4 is clear in part a) that support for new houses in rural areas would be supported where it meets one of the listed criteria. Under criterion i. of part a) of policy 17, housing in rural areas would only be supported where they would be located on a site allocated for housing within the LDP. Whilst policy 36 of HWLDP supports general development in the wider countryside, this does not amount to the allocation of sites for housing as required by policy 17. On this basis, the proposal would not be supported by criterion i. of part a) of policy 17 of NPF4.

8. The proposal would not be supported by the other criteria of part a) of NPF4 policy 17. It would not reuse brownfield land, a redundant or unused building or reinstate a former dwellinghouse. The appellant has not sought to justify the proposal as necessary to support a rural business or as essential for a worker to live permanently at or near their place of work, or as part of a retirement succession of a viable farm holding. As there is no building on the site, the proposed dwellinghouses cannot be supported as a subdivision of an existing residential dwelling or as an appropriate use of a historic environment asset.

9. Part b) of NPF4 policy 17 supports new homes in rural areas where they contribute to local living or local housing needs. The appellant considers that the proposal may provide affordable housing to meet demand within the local area. Whilst the proposal may provide a very limited number of additional houses for the area, I have no evidence before me to show that it would contribute towards a housing need identified in the council's Local Housing Strategy 2023-2028. On this basis, the proposal would not meet part b) of policy 17.

10. Part c) of policy 17 would not apply to the proposal as, whilst it is identified as falling within the 'rural hinterland', it is located immediately outwith the settlement boundary of Wick and as a result does not fall within a 'remote rural area'. Similarly, the proposal does not form the resettlement of a previously inhabited area and as such, would not gain support from part d) of policy 17.

11. Taking all of this together, the proposed dwellinghouses would fail to gain support from any of the provisions of policy 17 of NPF4. As a consequence, the principle of the

development in this location is not established and it would therefore be contrary to the development plan.

### Flood risk

12. The site is shown on Scottish Environment Protection Agency (SEPA) flood maps to be located within an area of medium to high flood risk from surface water flooding. Both SEPA and the council's Flood Risk Management Team objected to the proposal on this basis. In addition to this, two representations to the proposal were made regarding potential flood risk to the site and photographic evidence has been provided to me to show historic flooding of the site. The images show flooding which correlates to the location of the medium to high flood risk from surface water as shown on the SEPA flood map.

13. The appellant has not provided a drainage impact assessment to show appropriate or adequate site drainage or surface water management which may resolve or address any potential surface water flooding of the site. I note that the appellant has proposed the installation of a land drain surrounding the site to reduce any risk or impact from surface water flooding, but it has not been demonstrated to what extent this would be capable of mitigating the risk of surface water flooding.

14. Drawing CS/2a shows that the finished floor levels of both properties would be raised around 800 millimetres above the ground level in order to reduce flood risk to the properties. However, the raising of finished floor levels could result in the displacement of flood water, and could increase flood risk to neighbouring properties, contrary to part c) of NPF4 policy 22.

15. In its letter dated 20 October 2022, SEPA advised that there may also be an additional risk of fluvial flooding not previously captured by the flood map from the Mill Lade, which runs north to south through the field to the east of the proposed dwellinghouses. The Mill Lade is elevated around four metres above the ground level of the appeal site with a raised western embankment. SEPA identified that the raised Mill Lade embankment may function as an informal flood defence and that any development behind it, including the appeal proposal, could be vulnerable to flood risk from overtopping or structural failure.

16. The appellant's flood risk statement indicated that flood risk to the site would be low. The appellant has also stated that recent repairs made to the embankment together with fencing off the field would reduce any potential flood risk from the Mill Lade. However, the structural integrity of the Mill Lade embankment is unknown.

17. Based on the evidence before me and what I saw on site, it is likely that any surface water flooding, water run-off from the field or potential leakage from the Mill Lade could collect at the site. This would be due to the topography of the site, the elevation of the Mill Lade and the slope down to the appeal site. Taking all of this into account, the proposal has been shown to be at flood risk and as such, and in the absence of adequate mitigation it does not comply with policy 64 of the HWLDP.

18. Under policy 22 of NPF4, development at risk of flooding would only be supported in a limited number of circumstances. As the proposal is not essential infrastructure, a water compatible use, a redevelopment of an existing building or previously used site, it would not gain support under this policy. Taking into account the fact that the site is not offered protection by an existing formal flood protection scheme, or one under construction, and it

has been identified as being at risk of surface water flooding, there are no other exceptions or circumstances where policy 22 of NPF4 would support the proposal.

### Transport

19. Access to the site is from a single track unadopted road which leads on from the adopted section of Carnaby Road to the north of the site, to March Road to the south west. Carnaby Road leads further into Wick and would provide any future residents access to services and amenities within the town. March Road is an unadopted road and currently provides access to the A99. It also provides wider access to Old Wick Castle and local riding schools which the appellant confirms generates traffic along the unadopted road.

20. The council's transport planning team objected to the proposal on the basis that it would lead to the intensification of use at the substandard single lane junction of March Road and the A99. The poor condition of March Road and the unadopted road where the proposal is located, along with a lack of passing places on March road were additional reasons given by the transport planning team for its objection to the proposal.

21. I saw that the road where the site is located was in a poor condition, as raised in representations to the appeal, with potholes and unevenly patched sections. Whilst the road from the site to March Road is straight and affords good visibility, I saw no passing places. Each dwellinghouse would have an individual access onto the road, but a service bay would not be incorporated into the access to the dwellinghouses, contrary to the advice in the council's planning guidance 'access to single houses and small house developments'.

22. I note that the appellant would be willing to incorporate a lay-by at the front of the site and to create passing places to improve the road access. However, a design for these is not before me and the appellant has not provided details as to how they could be incorporated into the proposed layout. In any case, the inclusion of passing places at the site would not resolve the lack of passing places along March Road, nor would it resolve the issue associated with the substandard junction between March Road and the A99.

23. In my view, the appeal proposal has not taken into consideration the transport needs for the proposed development as appropriate for a rural location. Whilst connections to existing pedestrian and cycle networks could be made, which would be in line with some of the provisions of part b) of policy 13 of NPF4 and policy 56 of HWLDP, this would not overcome the issues relating to the poor condition of March Road and Carnaby Road where the site is located or the substandard access to the A99.

24. For these reasons given above, the proposal would not meet the expectations of HWLDP policy 36 or criterion b) of policy 17 of NPF4 in terms of adequate service relating to road access or meeting the transport needs as appropriate for the rural location.

### Conclusion

25. 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.

*Ailie Callan*

Reporter

Telephone: 0131 244 6902  
E-mail: colin.bell@gov.scot

Mr M Fitzpatrick  
Highland Council  
Sent By E-mail

Our ref: PPA-270-2285  
Planning Authority ref: 21/05563/FUL

21 July 2023

Dear Mark Fitzpatrick

**PLANNING PERMISSION APPEAL: LAND 30M SW OF OCALA OLDWICK WICK KW1 5TL**

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

DPEA is continuing to look at how we can improve the services we deliver and welcomes contributions from all those involved. In this regard I would be grateful if you could take five minutes to complete [our customer survey](#).

I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

*Colin Bell*

**COLIN BELL**  
Case Officer  
Planning And Environmental Appeals Division

