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Appeal Decision Notice

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

- Planning appeal reference: PPA-270-2284
- Site address: Windrill, Drumsmittal, North Kessock, Inverness, IV1 3XF
- Appeal by Mr T Campbell against the decision by the Highland Council
- Application for planning permission 22/02879/FUL dated 27 June 2022 refused by notice dated 14 December 2022
- The development proposed: erection of extension, formation of integral self-contained unit, erection of shed and retrospective installation of skate park (ancillary use to main dwelling)
- Application drawings listed in the schedule at the end of this notice
- Date of site visit by Reporter: 19 April 2023

Date of appeal decision: 28 June 2023

Decision

I allow the appeal and grant planning permission subject to the nine conditions listed at the end of the decision notice. Attention is drawn to the advisory note at the end of the notice.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the National Planning Framework 4 (NPF4), adopted 13 February 2023, the Highland-Wide Local development Plan (HWLDP) adopted 2012 and the Inner Moray Firth Local Development Plan (IMFLDP) adopted 2015. 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 policies in NPF4 that they consider to be relevant to the appeal.

2. The council has recently submitted the Inner Moray Firth Local Development Plan 2022 for examination. However, no evidence has been led on this document. As it is still subject to examination, it has not been taken into account in my overall reasoning.

3. The site is located in the dispersed rural community of Drumsmittal in North Kessock. The site is an irregularly shaped plot of land, and the existing dwellinghouse is located centrally within it. The proposed development constitutes a one and a half storey extension to the rear of the existing single storey dwellinghouse, change of use of the existing integral garage to a self-contained residential unit with potential use as short term let accommodation, the erection of a large shed located to the north west of the site, and the creation of a now partially completed skate park to the front of the dwellinghouse.

4. Having regard to the provisions of the development plan, the main issues in this appeal are whether the proposed development is acceptable in principle in the proposed location, and whether the proposed development would adversely impact on the character and amenity of neighbouring properties and surrounding area.

5. I consider the most relevant development plan policies for this case to be policies 5 (soils) of NPF4 and 55 (peat and soils) of HWLDP which both seek to minimise disturbance to soils from development. They are supported by policy 3 (biodiversity) of NPF4 and 57 (natural, built and cultural heritage) of HWLDP which also seek to protect and minimise potential adverse impacts on biodiversity.

6. In addition, policy 29 (rural development) of NPF4 and policies 28 (sustainable design) and 36 (development in the wider countryside) of HWLDP encourage suitable scaled, sited and designed development in rural areas where the character of the area is conserved and enhanced.

Principle of development

7. In considering the principle of development, I have taken regard of the lawful use of the land where the various components of the proposed development would be located. The proposed rear extension and change of use of the existing garage would fall within the domestic curtilage of the site. Based on the evidence before me regarding the use of the extension and self-contained unit, I consider that these elements of the proposal would be ancillary to the main dwellinghouse and, subject to more detailed consideration below, would be acceptable in principle.

8. The council and the appellant confirmed that the proposed shed and skate park would be located outwith the domestic curtilage on land with a lawful use of agriculture. Both parties confirmed that the land has been used in the past for agricultural purposes such as grazing and managed grassland. The site falls within the James Hutton Institute designation of 3.1 prime agricultural land. The site is also located within an area identified in the HWLDP proposals map as 'local/regional importance' land.

9. As the site has been identified as prime agricultural land and it falls within the HWLDP identification of local importance, part b) of policy 5 of NPF4 is relevant in terms of assessing whether the principle of development could be supported. Under this policy, development would only be supported in limited circumstances. The proposal would not meet the definition of any of the developments listed as permissible on prime agricultural land.

10. However, taking into account the overall size and scale of the proposed development, I consider that the overall impact arising from the loss of agricultural land as a result of the proposal would be low. The site is small, and the proposed development would be, in my opinion, a negligible intrusion into agricultural land.

11. In addition to this, whilst the site falls within the 'local/regional importance' designation in the HWLDP, I have no evidence before me to show what importance this specific site has. The designation applies to a broad expanse across large parts of the Highlands area, and the site is of such a small size in relation to the overall area that I consider the proposed development would have no discernible impact on the resource.

12. Further, the appellant has provided evidence to support his position that the appeal site falls short of meeting the Macaulay System definition and guidelines for class 3.1 prime agricultural land as set out in the James Hutton Institute 'land capability for agriculture in Scotland' document. The evidence provided in the appellant's drainage statement in relation to soil depth and percolation in conjunction with the slope of the site from the front of the dwelling down to the public road, shown on drawing 2021 070 007 as an angle of

slope greater than 7 degrees, persuades me that the precise characteristics of the site would not technically meet the Macauley system or James Hutton Institute parameters for class 3.1 prime agricultural land, notwithstanding its designation as such.

13. For these reasons, I consider that based on the evidence provided to me, the proposal is of such a small scale that any non-compliance with part b) of policy 5 would be so insignificant as to not, of itself, justify refusal of planning permission. Consequently, subject to my more detailed consideration below of the potential impacts of each element of the proposed development, I consider that the proposal is acceptable in principle in the location proposed.

Proposed skate park

14. New development in rural areas is expected, under part b) of policy 29 of NPF4 and policy 28 of HWLDP to be suitably scaled, sited and designed to be in keeping with the character of the area. The area surrounding the site is rural, with detached dwellinghouses set in plots of land interspersed with larger agricultural fields and commercial forestry related businesses.

15. Whilst the proposed skate park is not a typical land use in this area, I am satisfied that the intended use would be of a suitable scale for the area. It is domestic in scale and would not be used for business or public recreational use. With regards to the character of the area, I accept that whilst the skate park is not an agricultural use, it would be ancillary in scale, and its use would be incidental to the domestic dwellinghouse. I therefore consider this is still appropriate under the expectations of policy 29 of NPF4 and policy 36 of HWLDP.

16. Policy 28 of HWLDP also requires consideration of the potential impact of proposals on individual and community amenity. A number of objections were submitted to the appeal raising concerns relating to the potential environmental impact that could arise from the proposal, in particular potential visual and noise impacts on the amenity of neighbouring properties that could arise from the skate park.

17. Based on the evidence from the noise impact assessment carried out by the council's Environmental Health Officer on 4 November 2022, I am satisfied that the use of the skate park would be unlikely to result in noise that would form a statutory nuisance or an excessive detriment to amenity. The creation of earth bunds to the north, east and south of the skate park, and the installation of acoustic fencing on the northern earth bund would further reduce any potential residual noise impact that may arise from the use of the skate park. On this basis, I am satisfied that the proposal shows no incompatibility with policy 28.

18. From what I saw on site, I do not consider that the bunds or the fence would have an impact on the visual amenity of neighbouring properties. Due to the topography of the site and the distance between the skate park and the neighbouring property, they would screen the skate park from view and would not be visually intrusive. Further, as advised by the council's Transport Planning Team, the screening provided by the bunds and the distance of the skate park from the road would reduce any potential distraction to road users. Consequently, I consider that the proposed skate park would not have an adverse impact on visual amenity, in line with policy 28.

19. The siting of the skate park to the front of the dwellinghouse, sunken into the ground, has necessitated the excavation of soils. Development would only be supported under part a) of policy 5 of NPF4 where it would be designed and constructed in accordance with

the mitigation hierarchy and in a manner that would protect soils from damage. Although some disturbance of soils on undeveloped land has taken place, and the installation of the skate park may result in the compaction of soil, I consider that the appellant has taken care in siting the skate park to minimise excavation or disturbance to soils overall. For this reason, I consider that overall, the mitigation hierarchy referred to in part a) of policy 5 of NPF4 has been followed.

20. Policy 3 of NPF4 seeks to protect biodiversity; however, any measures should be proportionate to the nature and scale of development. Part a) of policy 3 encourages nature-based solutions to be incorporated into developments where possible. The siting of the skate park has sought to minimise the disturbance of the remainder of the field and thereby reduce the impact on biodiversity. I am satisfied that the retention of soils from the site to create the bunds referred to above is proportionate to the nature and scale of the proposed development.

21. Following the adoption of NPF4, the appellant has proposed additional planting that would support existing and create new biodiverse habitat such as wildflower and native planting. I am satisfied that a proposed planting scheme, similar to that described in the appellant's responses to my request for further information, would allow for compliance with policy 3 of NPF4 subject to a condition requiring the submission of a detailed landscaping scheme to be agreed with the council.

22. The council's Flood Risk Management Team provided no objection to the proposal and were satisfied that the proposed drainage from the skate park was appropriate given the site conditions. I consider that the condition proposed by the council requiring submission of the detailed drainage arrangements is reasonable given the evidence submitted in the appellant's drainage statement relating to ground permeability and soil percolation.

23. I am also satisfied that the condition recommended to prevent a drainage connection to the local road drainage network would be necessary to prevent unauthorised discharge which could result in water discharge freezing on the road during the winter months. This would be consistent with the expectations of part c) of policy 22 (flood risk and water management) of NPF4 that requires proposals to not increase risk of surface water flooding, manage all rain and surface water through sustainable urban drainage systems, and minimise the area of impermeable surfaces.

Proposed shed

24. The proposed shed would be located in the north west corner of the appeal site. It would be constructed in green profile sheeting and measure 8 metres in width, 18.5 metres in length and 4.4 metres to gutter height with a shallow pitched roof above. It would have a single door in grey metal and large garage style door to the front, eastern elevation. I saw other similar structures in the wider area and consider that the scale and design would be in keeping with these agricultural sheds and would be of a size and scale appropriate to a rural location. On this basis, the proposal would be consistent with policy 29 of NPF4 and policies 28 and 36 of HWLDP.

25. The land to the rear of the dwellinghouse, where the proposed shed would be located, is raised above the existing dwellinghouse. The construction of the proposed shed would require the excavation of soils. Under part a) of policy 5 of NPF4, development would only be supported where it would be designed and constructed in accordance with the mitigation hierarchy and in a manner that would protect soils from damage.

26. Part a) of policy 5 does not prevent development from taking place, rather it seeks to minimise the removal of soils. In my view, a balance has been taken between the excavation of the soils and the minimisation of any visual dominance of the proposed shed over the existing dwellinghouse and the minimisation of any visual impact outwith the site. As the shed has been sited to one side of the land, the removal of soil would be minimised. I am therefore satisfied that the mitigation hierarchy has been followed and the proposal would be consistent with part a) of policy 5. This would also be consistent with policy 55 of HWLDP which requires proposals to avoid unnecessary disturbance, degradation or erosion of peat and soils.

Proposed rear extension

27. The proposed one and a half storey rear extension would be located on the western elevation of the existing dwellinghouse. It would accommodate living accommodation ancillary to the main dwellinghouse, including a gym, wellness room and a games room on the ground floor and a bedroom suite and office on the first floor. A glazed balcony would project from the western end of the bedroom at first floor level.

28. Whilst I note that a previous extension of similar proportions was granted planning permission a number of years ago, I am required to consider the application before me. I consider that the rear extension would be subservient to the original building, in line with the general design principles contained in the council's 'house extensions and other residential alterations' guidance (May 2015). Although the proposed extension's roof ridge would extend above the ridge of the existing house, I do not consider that this would have a negative visual impact on the original building.

29. I am satisfied that there would be sufficient garden ground remaining within the domestic curtilage of the dwellinghouse if the proposed rear extension were granted planning permission. I am also satisfied that any concerns regarding drainage and management of water from the proposed small pool located on the ground floor could be adequately managed by the condition proposed by the council.

30. I note that representations raised concerns regarding the potential for overlooking from the proposed extension to neighbouring properties, in particular from the proposed balcony. However, there would be significant distance between the windows of the proposed extension's habitable rooms and balcony and any habitable rooms in neighbouring properties. Due to the distance between the buildings, I do not consider that there would be any potential for overlooking from the proposed extension. The proposed glazed screen with frosted glazing along the southern side of the balcony would further reduce any potential or perceived potential for overlooking.

31. Taking all of this together, I consider that the proposed extension would be consistent with policies 28 and 36 of HWLDP and part g) of policy 16 (quality homes) of NPF4. It would be subservient to the existing dwellinghouse and would not have a detrimental impact on the character, amenity or environmental quality of neighbouring properties or surrounding area.

Proposed self-contained unit

32. The proposed alteration of the existing garage to form a self-contained unit incorporates one bedroom, a bathroom and an open plan kitchen/living room within the existing garage footprint. The existing garage door would be replaced with a bifold glazed

triple window. As the proposed alteration would result in limited external alteration to the existing dwellinghouse, I have confined my assessment of this component of the development to considering the implications of the potential use of the unit. The appellant has confirmed that the primary use would be to accommodate family and friends, but that it may also be used as a commercially let self-contained holiday accommodation.

33. As there would be an element of commercial use of the unit, part e) of policy 30 (tourism) of NPF4 is relevant. I consider that there would not be any adverse impact on local amenity or the character of the area as the self-contained unit would be accommodated within an existing building, and sufficient car parking would be incorporated into the site for any visitors. The proposal would also not result in the loss of residential accommodation.

34. Both the appellant and the council have highlighted that there are currently similar style accommodations in the wider area, and I am content that the condition put forward by the council relating to use could satisfactorily control any future use of the unit. Taking all of this together, I am satisfied that the proposed self-contained unit would comply with part e) of policy 30 of NPF4.

35. The council's Transport Planning Team recommended a condition relating to improvements to be made to the existing road access in order to meet site access standards contained in the council's supplementary guidance 'single houses and small housing developments'. I am satisfied that this condition is appropriate and would mitigate any potential impact on road safety that may arise from additional road users accessing the site as a result of the proposed self-contained unit's use as guest or tourist accommodation.

Other matters

36. A large number of objections and representations were made to this appeal and to the original application. Concerns raised regarding the principle of the development, development on agricultural land, visual and noise impacts, road safety, and drainage have been considered above.

37. Further objections were made regarding disturbance to wildlife and livestock, on sites adjacent to the appeal site and in the wider area. I am satisfied that the potential noise and visual impacts have been fully assessed. I have no evidence before me to suggest that the proposed development or use of the skate park would adversely impact on wildlife or livestock, or that any reduction in wildlife occurred as a direct result of the appeal proposal.

Conclusion

38. I therefore conclude, for the reasons set out above, that the proposed development would accord overall with the relevant provisions of the development plan and that there are no material considerations which would justify not granting planning permission. I have identified a conflict with specific policy relating to prime agricultural land, but given the scale of the development, the very limited encroachment into prime agricultural land and noting the precise characteristics of the site, it would be disproportionate to apply that policy rigorously in this case.

39. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions and I therefore grant planning permission subject to the conditions and advisory note listed below. The conditions reflect those suggested by the

planning authority and as originally included in the council's planning committee report, which the appellant has not disputed.

40. I have amended conditions 7, 8 and 9 (conditions 6, 7 and 8 as proposed by the council) to refer to a skate park, as described, instead of a skatebowl for consistency purposes. I have also added condition 1 relating to the duration of planning permission, as required by section 58 of the Town and Country Planning (Scotland) Act 1997 as amended.

Ailie Callan

Reporter

Conditions

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of grant of this permission.

Reason: Section 58 of the Town and Country Planning (Scotland) Act 1997 requires a condition to be attached to permission limiting its duration. Three years is the default period set by law and there is no material reason indicating that a different period should be set.

2. No other development on the shed, extension or self-contained unit shall commence until the site access has been upgraded in accordance with the Highland Council's Access to Single Houses and Small Housing Developments guidelines with the junction formed to comply with SDB 2.

Reason: To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

3. For the avoidance of doubt there shall be no drainage connections to the local road drainage network.

Reason: To ensure that the efficiency of the existing Council Road drainage network is not adversely affected.

4. Prior to first occupation of the self-contained unit hereby approved parking spaces and turning as denoted on the approved Site and Location Plan drawing number 2021 070 000 shall be provided and shall be maintained for this use in perpetuity.

Reason: In order to ensure that the level of off-street parking is adequate.

5. The self-contained accommodation hereby approved shall be used solely as accommodation ancillary to the main dwellinghouse or for holiday letting purposes only and at no time shall it be occupied as a separate dwelling.

Reason: To ensure that the development does not become used as a separate dwellinghouse in recognition of the lack of private amenity space and in accordance with the use applied for.

6. The shed hereby approved shall be used solely for purposes incidental to the use of the house on the site and no commercial activity shall be carried out in or from the garage.

Reason: In order to clarify the terms of this permission, in accordance with the use applied for an in the interest of residential amenity as the use of the shed has not been considered for any other usage.

7. The skate park hereby approved shall be used solely for purposes incidental to the enjoyment of the dwelling house, and for no other purpose or use. For the avoidance of doubt the skate park shall not be open to members of the public or run as a commercial business at any time.

Reason: In order to clarify the terms of this permission, in accordance with the use applied for and in the interest of residential amenity as the application has been assessed on the basis of the skate park being for private use only.

8. No further development shall commence until a fully detailed scheme of landscaping for the site, has been submitted to and approved in writing by the Planning Authority. The landscaping plan shall detail of boundary treatments and all hard and soft landscaping including landscaping to the bund and any planting proposed within the site. The development shall thereafter be carried out in accordance with the details thereby approved. All planting thereby approved shall be undertaken in the first planting season following the completion of the skate park. Any plants which die, are removed, or become seriously damaged or diseased within a period of five years shall be replaced the following planting season to the original specification unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure that the bund and fence are finished to an appropriate standard in the interest of visual amenity.

9. Within 6 months of the date of this decision the drainage arrangements proposed for the skate park shall be completed to the satisfaction of the Planning Authority.

Reason: As the skate park is in situ with no formal drainage arrangements in place and this requires to be resolved within a reasonable timeframe in the interest of amenity.

Schedule of Application Drawings

Site and location plan	2021 070 000 Rev C
Drainage layout plan	CTCH-J4793-001
Proposed elevation plan	2021 070 006 Rev B
Proposed floor plans	2021 070 005 Rev A
Proposed plan shed	2021 070 010 Rev A

Advisory note

Notice of the completion of the development: As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).