

## **Grounds of Appeal**

**Erection of Dwellinghouse 600m North of Mayne Farm, Elgin, Moray**

November 2015

Planning Application Ref No 15/01330/APP

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## CONTENTS

|   |           |
|---|-----------|
| <b>Introduction.....</b>                                      | <b>3</b>  |
| <b>The Appeal Site.....</b>                                   | <b>3</b>  |
| <b>Planning History and Application Background.....</b>       | <b>3</b>  |
| <b>The Application.....</b>                                   | <b>3</b>  |
| <b>Development Plan Policy.....</b>                           | <b>3</b>  |
| <b>Moray Local Development Plan 2015.....</b>                 | <b>4</b>  |
| <b>Review of Decision Notice and Reasons for Refusal.....</b> | <b>5</b>  |
| • <b>Reason 1.....</b>  | <b>6</b>  |
| • <b>Reason 2.....</b>  | <b>6</b>  |
| <b>The Positive Case for the Development.....</b>             | <b>7</b>  |
| <b>Statement of Case.....</b>                                 | <b>8</b>  |
| <b>Summary and Conclusions.....</b>                           | <b>10</b> |

**Appendices – separate documents:**

**Appendix 1: Circular 4/2009 – Development Management Procedure (Annex A)**

**Appendix 2: Moray Local Development Plan- Extracts**

**Appendix 3: Decision Notice 15/01330/APP**

**Appendix 4: Class 8 of The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As Amended)**

**Appendix 5: Scottish Planning Policy- Extracts**

**Appendix 6: Report of Handling 15/01330/APP**

**Appendix 7: City of Edinburgh Council v Secretary of State for Scotland (1998) SC(HL) 33**

**Appendix 8: Revised Access Arrangements**

**Appendix 9: Application Planning Statement**

## **Introduction**

These grounds for review of a decision to refuse planning permission for a house on a site 600M North Of Mayne Farm Elgin Moray are submitted under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended). This notice of review has been lodged within the prescribed three month period from the refusal of permission dated 29/09/2015.

The grounds for review respond to the reasons for the refusal of planning permission and address the proposal in relation to Development Plan Policies and relevant material planning considerations as required by Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended).

## **The Appeal Site**

The appeal site is located in the southern extent of the Elgin R12 Knockmasting Wood designation (Appendix 2, page 7). It is the former site of a borrow pit used to excavate sand and gravel for use on the farm. The site is now redundant of its former use as the farming operation has evolved; subsequently it has been subject to extensive fly tipping, despite the landowner's efforts to prevent access. It has also come to the applicant's attention that the site has been advertised on social media as an events space- this is to the detriment of neighbouring amenity and is without the landowner's agreement and without the benefit of planning permission.

A fuller site description and context setting can be found in the application Planning Statement (Appendix 9).

## **Planning History and Application Background**

The application attracted objection comments from the Council's Development Plans and Transportation Teams. Environmental Health, Contaminated Land and Scottish Water did not object to this application. No objections were received from local residents.

## **The Application**

The proposal is for a modest single storey dwelling served by a public water supply and private drainage (septic tank/soakaway) and SUDS. Access will be from the U90E Bibohall Road.

The design of the proposed house is single storey with traditional proportions and finishes including natural slate to the roof, with wet dash render and sections of vertically panelled timber linings to the walls. The sites agricultural surrounds inspired the finished design, and it is in accordance with the Council's rural house design criteria (Appendix 2, page 8).

## **Development Plan Policy**

The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are "material considerations" to justify doing otherwise. The Development Plan for Moray comprises the Moray Local Development Plan 2015 and its associated supplementary guidance.

Material considerations are not defined statutorily. Examples of possible material considerations are set out in an Annex to Scottish Government Circular 4/2009 (Appendix 1) and they include;

- National Scottish Planning Policy
- The environmental impact of a proposal
- The design of a development and its relationship to its surroundings
- Access, provision of infrastructure and planning history of the site
- Views of statutory consultees
- Legitimate public concern, or support, expressed on relevant planning matters

The circular describes how planning applications should be determined when balancing the Development Plan and material considerations. It sets out the following approach;

- Identify the provisions of the development plan which are relevant to the decision,
- Interpret them carefully, looking at the aims and objectives of the plan as well
- detailed wording of policies,
- Consider whether or not the proposal accords with the Development Plan,
- Identify and consider relevant material considerations for and against the proposal, and
- Assess whether these considerations warrant a departure from the Development Plan.

The circular goes on to state that there are two main tests in deciding whether a consideration is material and relevant;

- It should serve or be related to the purpose of planning. It should therefore relate to the development and use of the land, and
- It should fairly and reasonably relate to the particular application.

The provisions of the circular are very important in the context of this application. The policies listed in the reasons for refusal stem from the sites position within the R12 Knockmasting Wood Settlement Statement and parent policy H1 Housing Land. It is considered that there are valid material considerations to justify approval of the proposal especially when the proposal is considered in relation to the detailed wording and aims and objectives of these policies in the context of the site and the relationship of the proposal to its surroundings.

### **Moray Local Development Plan 2015**

The proposed site is within the Elgin Settlement boundary where there is a general presumption in favour of development, subject to its adherence to relevant material considerations.

As stated, the site lies within the extent of the Elgin R12 (Appendix 2, page 7) designation which extends to 5.39 hectares and has capacity for 85 houses. This designation prescribes that a masterplan must be prepared for development of the site jointly with site R4 (South West of Elgin High School, 4ha, Indicative capacity 80 houses). It identifies a requirement for new woodland structure planting and the retention of Knockmasting Wood, two accesses into the site and road improvements as well as prescribing submission of a Transport Assessment, Flood Risk Assessment and Habitats Survey with a formal application to develop the site. It also identifies that developer contributions will be sought to mitigate impact on junctions TSP25 and TSP31.

Parent policy H1 Housing Land (Appendix 2, page 6) relates to designated sites and states proposals for development on designated housing sites must include or be supported by information regarding

the comprehensive layout and development of the whole site. This is stated to allow for consideration of all servicing, infrastructure and landscaping provision at the outset and to allow an assessment of any contribution or affordable housing requirement which needs to be provided.

In the absence of information relating to the erection of 85 houses and associated works, the case officer saw fit to attach reasons for refusal, listed in Appendix 2, relating to PP3 Placemaking (page 5), H1 Housing Land (page 6), Elgin R12 Knockmasting Wood (page 7), T2 Provision of Access (page 9), E2 Local Nature Conservation Sites and Biodiversity (page 11), E5 Open Spaces (page 12), E10 Countryside Around Towns (page 13), ER2 Development in Woodlands (page 14), EP7 Control of Development in Flood Risk Areas (page 17), IMP1 Developer Requirements (page 15) and IMP2 Development Impact Assessments (page 16).

### **Review of Decision Notice and Reasons for Refusal**

The decision notice (Appendix 3, page 18) issued by Moray Council is dated the 29<sup>th</sup> September 2015. There are two reasons for refusal, namely;

1. The proposal was considered to be premature and consequently failed to demonstrate that it will not prejudice the development of the remainder of the designated site. The proposal is contrary to policies PP3, H1, Elgin R12 Knockmasting Wood, T2, E2, E5, ER2, EP7, IMP1 and IMP2 of the Moray Local Development Plan 2015 for the following reasons:
  - The proposal is not supported by the necessary supporting information including a masterplan, a comprehensive layout, drainage proposals, landscaping proposals, tree protection measures and access details to ensure that the overall site is not developed in a piecemeal way;
  - The affordable housing provision/accessible housing, open space and other developer contributions would be prejudiced as the final number/ amount that was required as part of any future scheme would be at a reduced level;
  - The Elgin R12 site is constrained by road improvement schemes TSP3, TSP21, TSP22, TSP23 and TSP24 as identified in the Moray Local Development Plan 2015 and development on this site should not proceed until these improvements have been completed;
  - The proposal is not supported by information to demonstrate the development incorporates the principles of good placemaking;
  - The proposal is not supported by a Transport Assessment which is required by policy Elgin R12 Knockmasting Wood to ensure that all infrastructure and servicing proposals for the R12 site are acceptable;
  - The proposals are not supported by a Flood Risk Assessment which is required by policy Elgin R12 Knockmasting Wood to identify the extent of flood risk to the site and surrounding area, solutions and to ensure that the development does not exacerbate the existing flooding situation and;
  - The proposal is not supported by a Habitats Assessment which is required by policy Elgin R12 Knockmasting Wood to ensure that the development does not adversely affect a habitat or species of importance;
2. The proposed access is unacceptable and is contrary to policies T2, E10 and IMP1 for the following reasons:

- The proposals if permitted would involve the formation of a new vehicular access onto u90E Bilbohall Road where visibility is severely restricted by the adjacent embankment and vertical alignment of the road and would be likely to give rise to conditions detrimental to the safety of road users and;
- The proposed access track would encroach on the Elgin Countryside Around Towns as identified in the Moray Local Development Plan 2015 and would result in an erosion of the distinction between the countryside and identified limits of the settlement to the detriment of the rural character of the area.

The appellants positive case for granting the appeal is set out below. Before proceeding to that, we have the following comments on the reasons for refusal.

#### **Reason 1**

The key reason for refusal is contained in both reasons, since the claims made by the case officer all appear to flow from the sites position within the R12 Knockmasting Wood designation and parent policy H1 Housing Land.

It appears to the appellants that the settlement statement is inherently high level in nature, its main purpose being to identify appropriate housing sites at a strategic level, and broadly what infrastructure may be required to deliver these. The basis of this decision does not engage with the proposed development- it is essentially a claim that if there is not a slavish adherence to the letter of the settlement statement then a proposal must be taken as contrary to the development plan. This is not sustainable.

The proposed development broadly complies with the settlement statement in that it does not prejudice the full consideration of matters relating to the R12 designation nor does it prevent the realisation of the designation in the manner intended by the Development Plan. The departure is based on a perceived unacceptable impact on local infrastructure for which there is sound justification when a proposal for 85 houses is being assessed, but clearly not in relation to a proposal for a single house.

In the absence of the stated detrimental impact upon the integrity of the settlement statement, it is not reasonable for the Council to refuse the application on the basis of reasons more akin to an entirely separate development in the future.

#### **Reason 2**

The Transportation Section objected to the original proposal. As a result, positive steps were taken to remedy this and whilst the application was still live agreement was reached with the Transportation Engineer on suitable access arrangements. The revised arrangements are detailed in (Appendix 8) - these arrangements were presented to the case officer but unfortunately they were not accepted because the red line boundary was altered- despite the applicant being in control of the land.

Government advice on this subject is that it is sensible and time saving to allow applicants for planning permission to amend details of applications provided the amendments do not materially change the character of the development. The main pitfall for local authorities to avoid is to agree

changes which alter the basis of the proposal as was originally the subject of advertising and consultation.

Clearly in this case a minor amendment to the site boundary to provide suitable access arrangements is not a matter to which objection could reasonably be raised. As a result, it is the appellant's view that this amendment should have been accepted during the course of the application. Nevertheless, these arrangements are presented at this time and the Local Review Body can impose such conditions as they see fit as per Section 37(1) of the 1997 Act.

The remaining portion of this reason for refusal relate to the lack of a safe and suitable access and the position of access in the CAT designation (Policy E10). Policy E10 Countryside Around Towns states that development proposals within the CAT designation will be refused unless they:

- (a) involve the rehabilitation, conversion, limited extension, replacement or change of use of existing buildings, or
- (b) are necessary for the purposes of agriculture, forestry, low intensity recreational or tourism use or specifically allowed under the terms of other Local Development Plan policies or settlement statements within these areas (excluding houses in all these cases), or
- (c) are a designated "LONG" term housing allocation, released for development under the terms of Policy H2.

As a custodian of the land, the appellant recognises the importance of preventing development sprawl into the countryside more than anyone, but it should be noted that the position of the access on the plans is the only place safe and suitable access arrangements can be provided.

Furthermore, the installation of an access at the edge of the CAT cannot reasonably be construed to blur the distinction between the countryside and the built up area on its own. The application relates to the installation of a domestic access but it will also provide improved access into the field for agricultural purposes. The impact of this access on the special character of the CAT will not be significant.

It is also worth noting that the formation of an access on its own from the unclassified road would actually benefit from deemed planning permission under Class 8 of The Town and Country Planning (General Permitted Development) (Scotland) Order 2011 (Appendix 4, page 22).

### **The Positive Case for the Development**

The grounds for appeal are as follows:

- The proposed development is in conformity with the Development Plan
- The application has not been considered on its own individual merits;

The development complies with the development plan and enjoys considerable support, as demonstrated in the Planning Statement supporting the planning application and discussed below. More specifically, the appeal site is located within the Elgin settlement boundary on brownfield land where there is a general presumption in favour of development.

The development has the following benefits:

- It will provide accommodation in relation to an existing, well established agricultural business;
- The proposal will improve the condition of, and ensure the retention of Knockmasting Wood long into the future;
- It will put to productive use a brownfield site that has become unsightly and suffered from anti-social behaviour;

The applicant is the daughter of a second generation farmer in this area and she requires to be close to the farm to ensure efficient operation of the business. Currently she resides in Burghead approximately 7 miles away, thus making the operation of the farm difficult during busy periods.

Although there is accommodation available in Elgin, the application of a sequential test to justify this location is not necessary because it is clear that accommodation on the farmland controlled by the applicant is justified given the intricacies of running an established agricultural operation, especially where this proposal offers an opportunity to use the land surrounding the site more productively than ever before.

Scottish Planning Policy 2014 (Appendix 5, page 23) and policy ED7 of the MLDP 2015 (Appendix 2, page 10) strongly supports diversification and growth of the rural economy and it is clear that the provision of accommodation for an agricultural worker, on an established farming enterprise is in accordance with this overarching aim.

The applicant does not want to diminish the productivity of the business in any way by locating a house on prime agricultural land so this area of brownfield land was the logical choice. The development of derelict land including small sites is supported by Local and National Planning Policy where these have ceased to be required for their original purpose and where conversion to residential use would bring about an environmental benefit subject to appropriate siting and design. In this context then the proposed development complies with planning policy as it promotes the efficient use of land through directing development to an underused brownfield site.

The characteristics of the site, owing to its former use, means that the proposed development will nestle into the site immediately. When viewed from the south the site will benefit from a substantial backdrop of topography and mature planting and views of the site from the north are entirely blocked by Knockmasting Wood. The implementation of the proposed landscaping scheme will further integrate the development with its surroundings

Furthermore, it should be noted that the site is not included in SEPA's 1:200 year flood risk envelope, there are no environmental designations (National or International) covering the site and there is not historic/ archaeological interest in the site.

### **Statement of Case**

A planning statement was submitted with the application. It included an analysis of Development Plan policy and concluded that overall, the proposed development does not compromise the objectives of the Development Plan.

The Council has not argued against the policy assessment other than to state the proposal is contrary to the R12 Knockmasting Wood settlement statement and policy H1. Indeed, the Officer

appears to accept that the site is brownfield land and recognises that it is visually distinct from the rest of the designated site (Appendix 6, page 4 of handling report).

The Council's case is that because the development does not fully comply with the approved settlement statement the proposal must therefore be contrary to the development plan. This approach ignores the extent to which the proposal is in accordance with the Development Plan and the weight that can be attached to the positive elements of the proposal in comparison to the single element which is not in strict accordance with the requirements of the settlement statement.

This approach is contrary to the judgement set out in the case of City of Edinburgh Council v Secretary of State for Scotland (1998) SC(HL) 33- Lord Clyde said (Appendix 7, page 32):

*'it will obviously be necessary for the decision maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails to properly interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it.'*

The legal requirement to consider the plan as a whole, before determining whether the proposal is in accordance with it or not, appears to have been ignored. The Council have focused on the lack of information relating to the provision of 85 houses on a designated site but have not fully considered the impact of the proposed development on the integrity of the designation. To determine whether the proposed development accords with the R12 Knockmasting Wood designation and the adopted local development plan, the issue to be determined is whether the provision of details relating to the erection of 85 houses is necessary to support an application for a single house site, and whether this house site prejudices the realisation of this designation in the manner intended in the development plan.

The appellants contend that the submission of this information is simply not necessary. The settlement statement states that Knockmasting Wood should be retained; it is clear from the way the designation is presented in the development plan that the realisation of the designation rests with the provision of housing land to the north of Knockmasting Wood, and that the subject site would not form part of this.

In this context then, the applicant has retained control of Knockmasting Wood and through this application intends to implement a long term landscaping scheme to consolidate the existing group and add new native species trees to successfully integrate the development with its surroundings. The effect of this will be the long term retention of the woodland as prescribed, and if this proposal reaffirms this requirement through the proposed development and, as has been confirmed previously by the Council is visually distinct from the larger site, then it cannot reasonably be considered contrary to the aims and objectives of R12, H1 or ER2.

There is a strong presumption in favour of development that contributes towards sustainable development in Scottish Planning Policy 2014 i.e. '*development that meets the needs of the present*

*'without compromising the ability of future generations to meet their own needs'.* The Council has failed to take detailed account of the proposal from this viewpoint, instead adopting an unnecessarily restrictive approach to a proposal which will clearly not have the alleged detrimental impact on housing land supply in the future.

This appellant simply asks that the Council assess this proposal positively on its own individual merits.

### **Summary and Conclusions**

In reviewing the reasons for refusal and in preparing this appeal statement, it is evident that there is a single issue at the centre of debate, as perceived by the Planning Authority, the provision or otherwise of supporting information relating to the erection of 85 houses and associated works as prescribed by the R12 Knockmasting Wood designation.

It is our case that the omission of this information does not in itself lead to the application being wholly contrary to the development plan, nor is its omission of sufficient weight to warrant refusal. The application should not be refused on the basis that it does not include this information as the mechanism exists to obtain the necessary supporting documentation etc.

The Statement of Case above highlights the extent to which the decision to refuse the application fails to meet the requirement to consider all material considerations to the development proposed and reach a balanced decision.

It has been demonstrated that the development is actually in accordance with the R12 Knockmasting Wood designation with the exception of including detailed information relating to the larger site- the proposed development does not prejudice the delivery of a single element prescribed in the designation.

In conclusion, we argue that significant material planning considerations relate positively to the proposed development when it is assessed on its own individual merits and that we have clearly demonstrated that information relating to the realisation of R12 is fundamentally not required to enable the development proposed and the rest of the site to be delivered.

We respectfully ask that this appeal be sustained and planning permission granted.