

Appendices for 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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ANNEX A

DEFINING A MATERIAL CONSIDERATION

1. Legislation requires decisions on planning applications to be made in accordance with the development plan (and, in the case of national developments, any statement in the National Planning Framework made under section 3A(5) of the 1997 Act) unless material considerations indicate otherwise. The House of Lord's judgement on *City of Edinburgh Council v the Secretary of State for Scotland* (1998) provided the following interpretation. If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.
2. The House of Lord's judgement also set out the following approach to deciding an application:
 - Identify any 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 as 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.
3. 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 land, and
 - It should fairly and reasonably relate to the particular application.
4. It is for the decision maker to decide if a consideration is material and to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

5. The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy, and UK Government policy on reserved matters
 - The National Planning Framework
 - Scottish planning policy, advice and circulars
 - European policy
 - a proposed strategic development plan, a proposed local development plan, or proposed supplementary guidance
 - Guidance adopted by a Strategic Development Plan Authority or a planning authority that is not supplementary guidance adopted under section 22(1) of the 1997 Act
 - a National Park Plan
 - the National Waste Management Plan
 - community plans
 - the environmental impact of the proposal
 - the design of the proposed development and its relationship to its surroundings
 - access, provision of infrastructure and planning history of the site
 - views of statutory and other consultees
 - legitimate public concern or support expressed on relevant planning matters
6. The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

Appendix 2: Moray Local Development Plan- Extracts

PP3

Placemaking

All residential and commercial (business, industrial and retail) developments must incorporate the key principles of Designing Streets, Creating Places and the Council's supplementary guidance on Urban Design.

Developments should;

- create places with character, identity and a sense of arrival
- create safe and pleasant places, which have been designed to reduce the fear of crime and anti social behaviour
- be well connected, walkable neighbourhoods which are easy to move around and designed to encourage social interaction and healthier lifestyles
- include buildings and open spaces of high standards of design which incorporate sustainable design and construction principles
- have streets which are designed to consider pedestrians first and motor vehicles last and minimise the visual impact of parked cars on the street scene.
- ensure buildings front onto streets with public fronts and private backs and have clearly defined public and private space
- maintain and enhance the natural landscape features and distinctive character of the area and provide new green spaces which connect to green and blue networks and promote biodiversity
- The Council will work with developers and local communities to prepare masterplans, key design principles and other site specific planning guidance as indicated in the settlement designations.

Justification:

The Scottish Government aims to encourage higher standards of urban design and has published Designing Streets and Creating Places. The Council has approved supplementary guidance on urban design which developers are referred to.

The planning system encourages a designed approach to planning responding to the context and characteristics of each site. The 6 key qualities of distinctive, welcoming, adaptable, resource efficient, safe and pleasant and easy to move around and beyond should be considered and integrated into new developments.

Design statements are required for all major applications, however this approach is encouraged for all developments over 10 units to understand the proposal within the context of the site and surrounding environment.

Scottish Government policies encourage the creation of walkable neighbourhoods which are defined as neighbourhoods which have a range of facilities within 5 minutes (about 400 metres) walking distance of residential areas.

A Design and Access Statement is required for national and major planning applications and the Council encourages preparation of a Design Statement for all housing developments of 10 or more units and commercial developments in excess of 500 sq. metres.

Designated sites

Land has been designated to meet the strategic housing land requirements 2013-2025 in the settlement statements as set out in Table 1. Proposals for development on all designated housing sites must include or be supported by information regarding the comprehensive layout and development of the whole site. This allows consideration of all servicing, infrastructure and landscaping provision to be taken into account at the outset. It will also allow an assessment of any contribution or affordable housing needs to be made. Proposals must comply with the site development requirements within the settlement plans and policies and the Council's policy on Place-making and Supplementary Guidance, "People and Places".

Windfall sites within settlements

New housing on land not designated for residential development within settlement boundaries will be acceptable if;

- a) The proposal does not adversely impact upon the surrounding environment, and
- b) Adequate servicing and infrastructure is available, or can be made available
- c) The site is not designated for an alternative use
- d) The requirements of policies PP2, PP3 and IMP1 are met.

Housing Density

Capacity figures indicated within site designations are indicative and proposed capacities will be considered against the characteristics of the site, conformity with policies PP3, H8 and IMP1.

Justification:

The Council through its housing needs and demand assessment has identified a housing land target of 6456 units. This is based on an average need of 538 units per annum over the period 2013-2025. Table 1 on page 22 shows how this is to be met through sites already in the land supply and through new sites as identified in the relevant settlement statements. A five year effective supply of housing land to meet this requirement will be maintained at all times. This will be monitored and updated annually through the housing land audit. If the audit identifies a shortfall in the five year effective housing land supply, the Council will consider earlier release of "LONG" sites in accordance with Policy H2.

on Linkwood Road to Reiket Lane and a link should be provided to the cycle way to the back of Bain Road. (See TSP 37).

R11 Findrassie/Myreside Site

100 ha Indicative capacity for 1500 houses

Previously identified as a LONG site, this is now brought forward

as the major new land release for Elgin. The site extends to approximately 100 hectares and has capacity for 1500 houses.

A masterplan must be prepared and the development phased to create a distinct identity. The design principles set out in the accompanying map must be incorporated within proposals. Access to I8 should be considered in conjunction with this site. Development proposals will require to safeguard the integrity of Loch Spynie SPA. Adequate SUDs provision should be made. Flood risk may constrain parts of the site and a flood risk assessment will require to accompany proposals for development. Water resilient measures should be considered as part of this.

A Transport Assessment must be submitted with proposals and early contact with Moray Council Transportation is essential. Off site junction improvements will be required (see TSP's). Connection should be made with access arrangements for R7 and a new/upgraded junction onto the A941 is required. Widening and improvements required to Covesea Road and Myreside Road. Footway, cycleway and public transportation connections required.

R12 Knockmasting Wood

5.39 ha Indicative capacity 85 houses

The site extends to approximately 5.39 hectares and has capacity for 85 houses. A masterplan must be prepared for development of the site and site R4. New woodland structure planting is required to successfully integrate development into the landscape and Knockmasting Wood should

be retained. This site is constrained until TSP 3, 21, 22, 23, and 24 can be provided together with connectivity to adjacent development and routes to schools. A Transport Assessment requires to be submitted with proposals. At least two access points will be required and must be considered in association with other sites in the vicinity. Bilbohall Road will require widening. A flood risk assessment will require to be submitted and water resilient measures should be considered as part of this. A habitats survey will require to be submitted with proposals.

R13 Fairway Avenue

1 hectares Indicative capacity 10 houses

The site extends to 1 hectare and could accommodate up to 10 houses. Access will be via the adjacent housing but the layout should safeguard potential future connections through the site. The core path running around the site must be retained and enhanced. A landscaped edge should be provided along the southern edge of the site. Development will not commence until a new access to Elgin High School is constructed off Edgar Road (TSP 24). A habitats survey is required and this should consider if Ground Water Dependant Terrestrial Ecosystems will be affected.

R14 Former Hamilton Drive School Site

1.18 ha Indicative capacity 20 houses

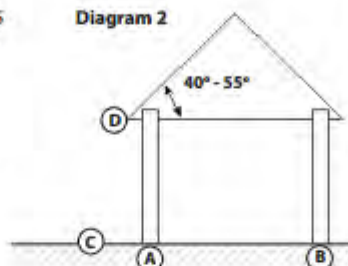
The site extends to 1.18 hectares and could accommodate up to 20 houses. Access proposals need to address visibility and gradients. Access to existing buildings to the south east of the site must be maintained. The core path running along the eastern site boundary should be maintained and enhanced. Survey work may be required to assess impact on bats and red squirrels within trees. A contaminated land survey requires to be submitted to confirm the proposals suitability for residential use.

If the above criteria for the setting of the new house are met, the following design requirements then apply:

Design

- i) A roof pitch between 40-55 degrees;
- ii) A gable width of no more than 2.5 times the height of the wall from ground to eaves level (see diagram 2);
- iii) Uniform external finishes and materials including slate or dark 'slate effect' roof tiles;
- iv) A vertical emphasis and uniformity to all windows and doors;
- v) Boundary demarcation that reflects the established character or style (e.g. dry stone dykes, hedges) in the locality;
- vi) Proposals must be accompanied by a landscaping plan showing an appropriate proportion of the plot, generally 25%, to be planted with native tree species at least 1.5 metres in height.

Diagram 2



Ground Level:

A fixed point measured 100mm below the finished floor level of a house with a solid ground floor;

or 300mm below finished floor level of a suspended ground floor

Eaves:

The point where the front face of the external wall intersects with the uppermost point of the roof line

The width of the gable as measured from A to B should not be greater than 2.5 times the height of the ground to eaves measurement C to D.

Pitch on roof to be 40° - 55°

Exceptions to the above design requirements will only be justified on the basis of innovative designs that respond to the setting of the house.

Proposals which involve the loss of woodland will be assessed against policy ER2 and must take account of the Council's Supplementary Guidance on Trees and Development.

Supplementary Guidance has been produced in order to provide further advice on the interpretation of this policy, and will be used in the process of determining planning applications.

Proposals for holiday homes in the open countryside will be assessed against this policy.

Other considerations such as noise contours, developer contributions and energy efficiency will be taken into account in the determination of a planning application, and advice on these matters can be viewed in the aforementioned Supplementary Guidance.

Policy T2**PROVISION OF ACCESS**

The Council will require that new development proposals are designed to provide the highest level of access for end users including residents, visitors, and deliveries appropriate to the type of development and location. Development must meet the following criteria:

- Proposals must maximise connections and routes for pedestrian and cyclists, including links to active travel and core path routes, to reduce travel demands and provide a safe and realistic choice of access.
- Provide access to public transport services and bus stop infrastructure where appropriate.
- Provide appropriate vehicle connections to the development, including appropriate number and type of junctions.
- Provide safe entry and exit from the development for all road users including ensuring appropriate visibility for vehicles at junctions and bends.
- Provide appropriate mitigation/modification to existing transport networks where required to address the impacts of new development on the safety and efficiency of the transport network. This may include but would not be limited to, the following measures, passing places, road widening, junction enhancement, bus stop infrastructure and drainage infrastructure. A number of potential road improvements have been identified in association with the development of sites the most significant of these have been shown on the Settlement Map as TSPs.
- Proposals must avoid or mitigate against any unacceptable adverse landscape or environmental impacts.

Developers should give consideration to aspirational core paths (under Policy 2 of the Core Paths Plan) and active travel audits when preparing proposals.

New development proposals should enhance permeability and connectivity, and ensure that opportunities for sustainable and active travel are protected and improved.

Justification

Policy supports the creation of sustainable communities accessible by a range of transport modes including viable alternatives to private vehicles. Pedestrian movement, cycling and public transport routes will be a priority. At the early design stages consideration should be given to the likely desire routes (public transport, schools, and facilities) which shall inform the layout and design of the development. Inclusion of aspirational core paths and active travel audit proposals will provide new links that have a focus on facilitating active travel and sustainable transport helping to maximise new development's accessibility and connections to existing networks and facilities.

The street design guidance within Designing Streets can be used as a material consideration in determining applications. Proposals must incorporate the principles of "Designing Streets" and the Council's supplementary guidance "People and Paces – A design Guide for Moray". Consideration should also be given to any active travel audits in place. For smaller developments in the countryside the Council's guidance "Transportation Requirements in Small Developments in Rural Parts of Moray" should be considered. The Planning Authority will be realistic about the likely availability of public transport services in rural areas. Innovative solutions such as demand responsive public transport and small scale park and ride facilities at nodes on bus corridors are encouraged to reduce travel demands by private vehicles.

Continued on next page.

Policy ED7 Rural Business Proposals

New business developments, or extensions to existing industrial/economic activities in the countryside, will be permitted if they meet all of the following criteria:

- a) There is a locational justification for the site concerned, particularly if there is serviced industrial land available in a nearby settlement
- b) There is capacity in the local infrastructure to accommodate the proposals, particularly road access, or that mitigation measures can be achieved
- c) Account is taken of environmental considerations, including the impact on natural and built heritage designations, with appropriate protection for the natural environment; the use of enhanced opportunities for natural heritage integration into adjoining land.
- d) There is careful control over siting, design, landscape and visual impact, and emissions. In view of the rural location, standard industrial estate/urban designs may not be appropriate.

Proposals involving the rehabilitation of existing properties (e.g. farm steadings) to provide business premises will be encouraged, provided road access and parking arrangements are acceptable.

Where noise emissions or any other aspect is considered to be incompatible with surrounding uses, there will be a presumption to refuse.

Outright retail activities will be considered against retail policies, and impacts on established shopping areas, but ancillary retailing (eg farm shop) will generally be acceptable.

Justification

The Council would wish to support economic development and to sustain employment in rural areas, by granting approval to new business proposals that fit into the environment and can be adequately serviced. In addition, there are already many long established, traditional business operations in rural areas, (e.g. distilleries) which may have expansion requirements and for whom re-location is not a realistic option.

Policy E2 Local Nature Conservation Sites and Biodiversity

Development likely to have a significant adverse effect on Local Nature Reserves, native woodlands identified in the Native Woodland Survey of Scotland, raised peat bog, wetlands, protected species, wildlife sites or other valuable local habitat or conflict with the objectives of Local Biodiversity Action Plans will be refused unless it can be demonstrated that;

- a) local public benefits clearly outweigh the nature conservation value of the site, and
- b) there is a specific locational requirement for the development

Where there is evidence to suggest that a habitat or species of importance exists on the site, the developer will be required at his own expense to undertake a survey of the site's natural environment.

Where development is permitted which could adversely affect any of the above habitats or species the developer must put in place acceptable mitigation measures to conserve and enhance the site's residual conservation interest.

Development proposals should protect and where appropriate, create natural and semi natural habitats for their ecological, recreational and natural habitat values. Developers will be required to demonstrate that they have considered potential improvements in habitat in the design of the development and sought to include links with green and blue networks wherever possible.

Justification

This policy aims to protect sites and species of local nature conservation value from potentially damaging developments. If a development proposal is likely to have a significant environmental impact then an environmental impact assessment will be required to accompany any application for planning permission.

If there is evidence of the presence or potential presence of a legally protected species on site which may be affected by a proposed development, any likely impact must be fully considered prior to the determination of the application.

The settlement statements identify a number of sites where ecological evaluation studies will be required. Developers should incorporate existing habitats into their proposals and identify suitable opportunities for creating and restoring habitats and wildlife corridors. Local Nature Conservation Sites are shown on the Proposals Map.

Where appropriate, a phase 1 Habitat survey should be used to identify if wetlands are present - and if so, a more detailed National Vegetation Classification (NVC) survey should be undertaken to identify if the wetlands are groundwater dependent habitats.

Policy E5 Open Spaces

Safeguarding Open Spaces

Development which would cause the loss of, or adversely impact on, areas identified under the ENV designation in settlement statements and the amenity land designation in rural groupings will be refused unless;

- The proposal is for a public use that clearly outweighs the value of the open space or the proposed development is ancillary to the principal use and will enhance use of the site for sport and recreation; and
- The development is sited and designed to minimise adverse impacts on the recreational, amenity and biodiversity value of the site; and
- There is a clear excess of the type of ENV designation within easy access in the wider area and loss of the open space will not negatively impact upon the overall quality and quantity of open space provision, or
- Alternative provision of equal or greater benefit will be made available and is easily accessible for users of the developed space.

Provision of new Open Spaces

Quantity

New green spaces should be provided to the following standards;

- Residential sites less than 10 units - landscaping to be determined under the terms of policies PP3 and IMP1 to integrate the new development.
- Residential sites 10-50 units and new industrial sites- minimum 15% open space
- Residential sites 51-200 units- minimum 20% open space
- Residential sites 201 units and above and Business Parks- minimum 30% open space including allotments, formal parks and playspaces within residential sites.

Justification

The aim of this policy is to protect open spaces identified in the settlement statements and rural grouping statements as well as to provide standards for the quantity and quality of provision in new development. Open spaces provide opportunities for social contact and recreation and provide biodiversity and landscape benefits. Open spaces should be safe, secure, accessible, well maintained and linked together to create green and blue corridors.

Green corridors link woodlands and open spaces, while blue corridors link watercourses which can have high biodiversity value and offer additional recreational opportunities. Blue corridors is a collective term for a number of interconnecting features, which could include rivers, flood storage areas, floodplains, ponds, wetlands and drains.

Decisions on excess and new provision of sports areas will be made in consultation with Sport Scotland. Open air sports facilities will be considered to contribute towards the overall provision of open space in new developments.

Requirements for new playspaces, sports fields and play equipment will be considered on a case by case basis until the Open Space strategy is operational and should be incorporated within the sliding scale of requirements identified in the policy. The percentage requirements identified in the policy represent the percentage of the application site to be used for providing green space. The Council will, however, take into consideration site topography, existing and surrounding features and other matters when considering green space provision in new developments. *Continued on next page.*

Policy E10 Countryside Around Towns

Development proposals within the Countryside Around Towns (CAT's) areas identified around Elgin, Forres, Buckie, Keith and Lossiemouth 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.

Justification:

The five main towns of Elgin, Forres, Buckie, Keith and Lossiemouth are subject to the highest development pressures and CAT's have been designated to prevent development sprawl into the countryside. Only certain types of development are appropriate within CAT's to protect their special character. New housing development (other than under criteria a) is specifically excluded from the types of acceptable development, to maintain and preserve the distinction with the built up area.



Policy ER2 Development in Woodlands

All woodlands

Development which involves the loss of woodlands will be refused where the development would result in unacceptable adverse effects on the amenity, landscape, biodiversity, economic or recreational value of the woodland or prejudice the management of the forest. Woodland removal will only be supported where it can be demonstrated that the impact on the woodland is clearly outweighed by social or economic benefits of national, regional and local importance, and if a programme of proportionate compensatory planting has been agreed with the Planning Authority.

Protected Woodlands

Woodland removal within native woodlands, ancient semi natural and woodlands within sites protected under the terms of policies E1 and E2 will not be supported.

Tree surveys and new planting

Development proposals must take account of the Council's Trees and Development supplementary guidance. The Council will require the provision of compensatory planting to mitigate the effects of woodland removal.

Where appropriate the Council will seek opportunities to create new woodland and plant native trees in new development proposals. If a development would result in the severing or impairment of connectivity between important woodland habitats, mitigation measures should be identified and implemented to support the wider green network.

Justification:

Woodland removal for the terms of this policy is defined as the permanent removal of woodland for the purposes of conversion to another land use. Woodlands provide a valuable resource in terms of climate change as well as landscape and recreational benefits. Semi natural woodland is an irreplaceable resource and should be protected from development. This policy aims to avoid clear felling of woodlands for development unless the terms of the policy are met.

The Council encourages new woodland planting within development proposals and the connection of woodlands to form a wider green network.

The Forestry Commission Scotland will be consulted on issues arising from proposals in relation to the management of the woodland. Scottish Natural Heritage will be consulted on the biodiversity value of the woodland. The Moray Access Manager and Forestry Commission Scotland will be consulted on the recreational value of the woodland. Scottish Environment Protection Agency will be consulted on issues in relation to potential impacts on water quality under the Water Framework Directive.

Policy ER3 Safeguarding Mineral Reserves

The Council will safeguard all existing workable mineral reserves/operations from incompatible development which is likely to prejudice it unless;

- There are no alternative sites for development, and
- The extraction of mineral resources will be completed before development commences.

Justification

This policy aims to ensure that minerals reserves are safeguarded from development that may sterilise them. The availability of construction materials provides jobs and supports the local economy.

The demand for and scarcity of consented reserves for building stone means that reserves should be safeguarded as they are important for the repair of existing buildings and as a new building material.

Policy IMP1 Developer Requirements

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It should comply with the following criteria

- a) The scale, density and character must be appropriate to the surrounding area.
- b) The development must be integrated into the surrounding landscape
- c) Road, cycling, footpath and public transport must be provided at a level appropriate to the development. Core paths; long distance footpaths; national cycle routes must not be adversely affected.
- d) Acceptable water and drainage provision must be made, including the use of sustainable urban drainage systems (SUDS) for dealing with surface water.
- e) Where of an appropriate scale, developments should demonstrate how they will incorporate renewable energy systems, and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria.
- f) Make provision for additional areas of open space within developments.
- g) Details of arrangements for the long term maintenance of landscape areas and amenity open spaces must be provided along with Planning applications.
- h) Conservation and where possible enhancement of natural and built environmental resources must be achieved, including details of any impacts arising from the disturbance of carbon rich soil.
- i) Avoid areas at risk of flooding, and where necessary carry out flood management measures.
- j) Address any potential risk of pollution including ground water contamination in accordance with recognised pollution prevention and control measures.
- k) Address and sufficiently mitigate any contaminated land issues
- l) Does not sterilise significant workable reserves of minerals or prime quality agricultural land.
- m) Make acceptable arrangements for waste management.

Justification

The quality of development in terms of its siting, design and servicing is a priority consideration within the Plan. In the first instance, development needs to be suitable to the surrounding built and natural environment. Development should be adequately serviced in terms of transport, water, drainage, with particular emphasis on providing pedestrian and cycle access, and any necessary public transport facilities/connections. The use of SUDS and incorporation of renewable energy techniques and sustainable design and construction methods will all help promote sustainability in Moray. Most of the serious flood risks have been addressed by flood alleviation schemes, but there are still areas that are susceptible and these should be avoided. Similarly, pollution issues in relation to air, noise, groundwater and ground contamination, must be adequately addressed to provide proper development standards.

Policy IMP2 Development Impact Assessments

The Council will require applicants to provide impact assessments in association with planning applications in the following circumstances:

- a) An Environmental Assessment (EA) will be required for developments that are likely to have significant environmental effects under the terms of the regulations.
- b) A Transport Assessment (TA) will be sought where a change of use or new development is likely to generate a significant increase in the number of trips being made. TAs should identify any potential cumulative effects which would need to be addressed. Transport Assessments should assess the effects the development will have on roads and railway infrastructure including stations and any crossings. Transport Scotland (Trunk Roads) and Network Rail (Railway) should be consulted on the scoping of Transport Assessments. Moray Council's Transportation Service can assist in providing a screening opinion on whether a TA will be sought.
- c) In order to demonstrate that an out of centre retail proposal will have no unacceptable individual or cumulative impact on the vitality and viability of the identified network of town centres, a Retail Impact Assessment will be sought where appropriate. This may also apply to neighbourhood shops, ancillary retailing and recreation/tourism retailing.
- d) Where appropriate, applicants may be asked to carry out other assessments (e.g. noise; air quality; flood risk; drainage; bat; badger; other species and habitats) in order to confirm the compatibility of the proposal

Justification

Where a development may have potentially significant environmental, transport or retail impacts on surrounding areas, it will be appropriate to ask the applicant to undertake formal assessments, so that the impacts can be quantified and appropriate mitigations identified.

Policy EP7 Control Of Development in Flood Risk Areas

New development should not take place if it would be at significant risk of flooding from any source or would materially increase the possibility of flooding elsewhere. Proposals for development in areas considered to be at risk from flooding will only be permitted where a flood risk assessment to comply with the recommendations of National Guidance and to the satisfaction of both the Scottish Environment Protection Agency and the Council is provided by the applicant. This assessment must demonstrate that any risk from flooding can be satisfactorily mitigated without increasing flood risk elsewhere. Due to continuing changes in climatic patterns, the precautionary principle will apply when reviewing any application for an area at risk from inundation by floodwater.

Justification

The aim of the policy is to primarily direct development away from areas at risk from flooding in the first instance, and ensure that potential risk from flooding is adequately considered in terms of planning applications. Where impacts are identified they should be satisfactorily mitigated without passing on the problem elsewhere. The Flood Risk Framework in Scottish Planning Policy requires sustainable flood management approaches to be taken forward which will improve bed banks and shores. Such an approach will also contribute to the "protect" and "enhance" objectives of the Water Framework Directive.

The following limitations on development will also be applied to take account of the degree of flooding as defined in Scottish Planning Policy:

- In areas of little to no risk (less than 0.1%) there will be no general constraint to development.
- Areas of low to medium risk (0.1% to 0.5%) will be considered suitable for most development. A flood risk assessment may be required at the upper end of the probability range (i.e. close to 0.5%), and for essential civil infrastructure and most vulnerable uses. Water resistant materials and construction may be required. Areas within this risk category will generally not be suitable for civil infrastructure. Where civil infrastructure must be located in these areas or is being substantially extended, it should be designed to be capable of remaining operational and accessible during extreme flooding events.
- Areas of medium to high risk (0.5% or above) may be suitable for:
 - Residential, institutional, commercial and industrial development within built up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood management plan;
 - Essential infrastructure within built up areas, designed and constructed to remain operational during floods and not impede water flow;
 - Some recreational, sport, amenity and nature conservation uses, provided appropriate evacuation procedures are in place and
 - Job related accommodation e.g. for caretakers or operational staff.

Areas within these risk categories will generally not be suitable:

- Civil infrastructure and most vulnerable uses;
- Additional development in undeveloped and sparsely developed areas, unless a location is essential for operational reasons, e.g. for navigation and water based recreation, agriculture, transport or utilities infrastructure (which should be designed to be operational during floods and not impede water flow); and
- an alternative, lower risk location is not available and
- New caravan and camping sites.

Where development is permitted, measures to protect against or manage flood risk will be required and any loss of flood storage capacity mitigated to achieve a neutral or better outcome. Water resistant materials and construction should be used where appropriate. Elevated buildings on structures such as stilts are unlikely to be acceptable.

This policy specifies limitations on the type of development within potential flood risk areas and seeks to ensure that essential civil infrastructure is not placed at undue risk on the grounds of public safety. Civil infrastructure in the context of flood risk includes hospitals, fire stations, emergency depots, schools, care homes, ground-based electrical and telecommunications equipment.

Essential infrastructure in a flood risk area for operational reasons is defined as essential transport infrastructure and essential utility infrastructure which may have to be located in a flood risk area for operational reasons. This includes electricity generating stations, power stations and grid and primary sub stations, water treatment works and sewage treatment works and wind turbines.

Most vulnerable uses in the context of flood risk and drainage includes basement dwellings, isolated dwellings in sparsely populated areas, dwelling houses behind informal embankments, residential institutions such as residential care homes/prisons, nurseries, children's homes and educational establishments, caravans, mobile homes and park homes intended for permanent residential use, sites used for holiday or short-let caravans and camping, installations requiring hazardous substance consent.

The source of information used to determine flood risk areas are the Scottish Environment Protection Agency Indicative flood maps which are accessible on the SEPA website.



**THE MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
as amended**

REFUSAL OF PLANNING PERMISSION

**[Elgin City South]
Application for Planning Permission**

TO



With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

Erect dwellinghouse with garage on Site 600M North Of Mayne Farm Elgin Moray

and for the reason(s) set out in the attached schedule.

Date of Notice: **29 September 2015**



HEAD OF DEVELOPMENT SERVICES

Environmental Services Department
The Moray Council
Council Office
High Street
ELGIN
Moray
IV30 1BX

IMPORTANT
YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW

SCHEDULE OF REASON(S) FOR REFUSAL

By this Notice, the Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

1. The proposal is considered to be premature and has 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 proposal is 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 proposal 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

(Page 2 of 4)

Ref: 15/01330/APP

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.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision: -

| Reference | Version | Title |
|--------------|---------|-------------------|
| 015/01306/03 | | Location plan |
| 015/01306/02 | | Block plan |
| 015/01306/04 | | Elevations 1 |
| 015/01306/07 | | First floor plan |
| 015/01306/06 | | Ground floor plan |
| 015/01306/10 | | Section C |
| 015/01306/08 | | Section plan |
| 015/01306/09 | | Sections A |
| 015/01306/01 | | Site plan |
| 015/01306/11 | | Visibility splay |
| 015/01306/05 | | Elevations 2 |

**NOTICE OF APPEAL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, The Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from www.eplanning.scotland.gov.uk

If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

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

situated, or

- (b) any area within which is sited or is proposed to be sited equipment operated by or on behalf of the Secretary of State for Defence for the provision of air traffic services, particulars of which have been furnished by the Secretary of State for Defence to the planning authority or authorities for the area in which it is
- (c)

PART 2

SUNDRY MINOR OPERATIONS

Class 7.—

(1) The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

(2) Development is not permitted by this class if—

- (a) the height of any gate, fence, wall or other means of enclosure to be erected or constructed within 20 metres of a road would, after the carrying out of the development, exceed one metre above ground level;
- (b) the height of any other gate, fence, wall or other means of enclosure to be erected or constructed would exceed two metres above ground level;
- (c) the height of any existing gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or
- (d) it would involve development within the curtilage of, or in respect of a gate, fence, wall or other means of enclosure surrounding, a listed building.

Class 8.

The formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with development permitted by any class in this Schedule other than Class 7.

Class 9.—

(1) The stone cleaning or painting of the exterior of any building or works.

(2) Development is not permitted by this class—

- (a) for the purposes of advertisement, announcement or direction;
- (b) where the building or works are in a conservation area; or
- (c) where the building is a listed building.

(3) For the purposes of this class, “painting” includes any application of colour.

(a)

Appendix 5: Scottish Planning Policy- Extracts

Scottish Planning Policy

range of policies that provide for additional housing requirements, economic development, and the varying proposals that may come forward, while taking account of the overarching objectives and other elements of the plan.

79. Plans should set out a spatial strategy which:

- reflects the development pressures, environmental assets, and economic needs of the area, reflecting the overarching aim of supporting diversification and growth of the rural economy;
- promotes economic activity and diversification, including, where appropriate, sustainable development linked to tourism and leisure, forestry, farm and croft diversification and aquaculture, nature conservation, and renewable energy developments, while ensuring that the distinctive character of the area, the service function of small towns and natural and cultural heritage are protected and enhanced;
- makes provision for housing in rural areas in accordance with the spatial strategy, taking account of the different development needs of local communities;
- where appropriate, sets out policies and proposals for leisure accommodation, such as holiday units, caravans, and huts;
- addresses the resource implications of the proposed pattern of development, including facilitating access to local community services and support for public transport; and
- considers the services provided by the natural environment, safeguarding land which is highly suitable for particular uses such as food production or flood management.

80. Where it is necessary to use good quality land for development, the layout and design should minimise the amount of such land that is required. Development on [prime agricultural land](#), or land of lesser quality that is locally important should not be permitted except where it is essential:

- as a component of the settlement strategy or necessary to meet an established need, for example for essential infrastructure, where no other suitable site is available; or
- for small-scale development directly linked to a rural business; or
- for the generation of energy from a renewable source or the extraction of minerals where this accords with other policy objectives and there is secure provision for restoration to return the land to its former status.

81. In accessible or pressured rural areas, where there is a danger of unsustainable growth in long-distance car-based commuting or suburbanisation of the countryside, a more restrictive approach to new housing development is appropriate, and plans and decision-making should generally:

- guide most new development to locations within or adjacent to settlements; and
- set out the circumstances in which new housing outwith settlements may be appropriate, avoiding use of occupancy restrictions.

82. In some most pressured areas, the designation of green belts may be appropriate.

83. In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

- encourage sustainable development that will provide employment;
- support and sustain fragile and dispersed communities through provision for appropriate development, especially housing and community-owned energy;

Principal Policies

Sustainability

NPF and wider policy context

24. The Scottish Government's central purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.

25. The Scottish Government's commitment to the concept of sustainable development is reflected in its Purpose. It is also reflected in the continued support for the five guiding principles set out in the UK's shared framework for sustainable development. Achieving a sustainable economy, promoting good governance and using sound science responsibly are essential to the creation and maintenance of a strong, healthy and just society capable of living within environmental limits.

26. The NPF is the spatial expression of the Government Economic Strategy (2011) and sustainable economic growth forms the foundations of its strategy. The NPF sits at the top of the development plan hierarchy and must be taken into account in the preparation of strategic and local development plans.

27. The Government Economic Strategy indicates that sustainable economic growth is the key to unlocking Scotland's potential and outlines the multiple benefits of delivering the Government's purpose, including creating a supportive business environment, achieving a low carbon economy, tackling health and social problems, maintaining a high-quality environment and passing on a sustainable legacy for future generations.

Policy Principles

This SPP introduces a presumption in favour of development that contributes to sustainable development.

28. The planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place; it is not to allow development at any cost.

29. This means that policies and decisions should be guided by the following principles:

- giving due weight to net economic benefit;
- responding to economic issues, challenges and opportunities, as outlined in local economic strategies;
- supporting good design and the six qualities of successful places;
- making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;
- supporting delivery of accessible housing, business, retailing and leisure development;

- supporting delivery of infrastructure, for example transport, education, energy, digital and water;
- supporting climate change mitigation and adaptation including taking account of flood risk;
- improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation;
- having regard to the principles for sustainable land use set out in the Land Use Strategy;
- protecting, enhancing and promoting access to cultural heritage, including the historic environment;
- protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment;
- reducing waste, facilitating its management and promoting resource recovery; and
- avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

Key Documents

- [National Planning Framework](#)¹⁷
- [Government Economic Strategy](#)¹⁸
- [Planning Reform: Next Steps](#)¹⁹
- [Getting the Best from Our Land – A Land Use Strategy for Scotland](#)²⁰
- [UK's Shared Framework for Sustainable Development](#)²¹

Delivery

Development Planning

30. Development plans should:

- be consistent with the policies set out in this SPP, including the presumption in favour of development that contributes to sustainable development;
- positively seek opportunities to meet the development needs of the plan area in a way which is flexible enough to adapt to changing circumstances over time;
- support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area;
- be up-to-date, place-based and enabling with a spatial strategy that is implemented through policies and proposals; and
- set out a spatial strategy which is both sustainable and deliverable, providing confidence to stakeholders that the outcomes can be achieved.

17 www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Framework

18 www.scotland.gov.uk/Publications/2011/09/13091128/0

19 www.scotland.gov.uk/Publications/2012/03/3467

20 www.scotland.gov.uk/Publications/2011/03/17091927/0

21 <http://archive.defra.gov.uk/sustainable/government/documents/SDFramework.pdf>

Appendix 6: Report of handling 15/01330/APP

REPORT OF HANDLING

| | | | |
|--------------------------------------|--|-------------------------|----------------|
| Ref No: | 15/01330/APP | Officer: | Lisa Macdonald |
| Proposal Description/ Address | Erect dwellinghouse with garage on Site 600M North Of Mayne Farm Elgin Moray | | |
| Date: | 29.09.2015 | Typist Initials: | LMC |

RECOMMENDATION

| | | |
|--|-------------------|---|
| Approve, without or with condition(s) listed below | | N |
| Refuse, subject to reason(s) listed below | | Y |
| Legal Agreement required e.g. S,75 | | N |
| Notification to Scottish Ministers/Historic Scotland | | N |
| Hearing requirements | Departure | N |
| | Pre-determination | N |

CONSULTATIONS

| Consultee | Date Returned | Summary of Response |
|---------------------------------|---------------|---|
| Environmental Health Manager | 24/08/15 | No objection |
| Contaminated Land | 03/09/15 | No objection |
| Transportation Manager | 04/09/15 | Object – The proposal is contrary to policies T2, IMP1 and IMP2 in that it fails to provide comprehensive details of the layout and access arrangements for the R12 site, fails to provide a Transport Assessment, is premature as required road improvement schemes have yet to be completed and the proposed access would give rise to conditions detrimental to road safety. |
| Scottish Water | 02/09/15 | No objection |
| Development Plans (Environment) | 31/08/15 | Object – the proposal fails to provide comprehensive details of the development of the R12 site and fails to comply with policy in relation to placemaking, landscaping, trees, habitats, flood risk, drainage, access etc and the development could prejudice the future development of the R12 site. |

| DEVELOPMENT PLAN POLICY | | |
|--|-----|--|
| Policies | Dep | Any Comments (or refer to Observations below) |
| Moray Local Development Plan 2015 | | |
| PP1: Sustainable Economic Growth | N | |
| PP2: Climate Change | N | |
| PP3: Placemaking | N | |
| H1: Housing Land | Y | |
| E2: Loc Nature Cons Sites & Biodiversity | Y | |
| E5: Open Spaces | Y | |
| E10: Countryside Around Towns | Y | |
| EP5: Sustainable Urban Drainage Systems | N | |
| EP9: Contaminated Land | N | |
| EP10: Foul Drainage | N | |
| ER2: Development in Woodlands | Y | |
| T2: Provision of Access | Y | |
| T5: Parking Standards | N | |
| IMP1: Developer Requirements | Y | |
| IMP2: Development Impact Assessments | Y | |
| IMP3: Developer Obligations | N | |
| Elgin R12: Knockmasting Wood | Y | |

| REPRESENTATIONS | | |
|---|--|----|
| Representations Received | | NO |
| Total number of representations received | | |
| Names/Addresses of parties submitting representations | | |
| Summary and Assessment of main issues raised by representations | | |
| Issue: | | |
| Comments (PO): | | |

OBSERVATIONS – ASSESSMENT OF PROPOSAL

The Proposal

This application seeks permission for a single house with a new access and drainage provision.

The site is within the Elgin R12 Knockmasting Wood designation which has an identified capacity of 85 units. No details of the proposals to develop the rest of the R12 site have been provided with the current application.

The Site

The site is a cleared area on the edge of woodland. The application site is on the edge of the R12 designation and the remainder of the designated site is more densely wooded. There is a change in levels with the land rising from the level of the public road at the south east to the designated site. The proposed access track runs south west from the plot to the public road. This cuts through the Elgin Countryside Around Towns (CAT).

Prematurity of the application and Lack of Information (PP3, H1, E2, E5, EP7, ER2, T2, IMP1, IMP2 & Elgin R12)

This proposal is for a single house on land that is part of the Elgin R12 designation which has an identified housing capacity of 85 units. The proposal is considered to be premature as it does not include details relating to the layout and development of the whole designated site and has been brought forward in advance of road improvement schemes which constrain development on this site.

Policy H1 states that all proposals for development on designated housing sites must include or be supported by information regarding the comprehensive layout and development of the whole site. No such information has been provided with the application. In the absence of any supporting information it is not possible to assess how this application would relate to the wider designated site or to establish that the proposal would not prejudice the future development of the remainder of the site. There is no information to demonstrate that all required layout, drainage, servicing, infrastructure and landscaping provisions can be adequately accommodated and no information that would allow assessment of the requirements for open space, affordable and accessible housing or development contributions and these contributions would be at a reduced level because the site was not being considered as a whole. There are no details which allow assessment against the placemaking policy (PP3) and therefore no indication of how development on the application site would relate to the wider development and fit in with the aims of this policy. The proposal lacks sufficient details to comply with policies PP3, H1, E2, E5, E10, EP7, ER2, T2, IMP1, IMP2 and Elgin R12 and there is insufficient detail to demonstrate that development on this site would not prejudice development of the remainder of the site.

Elgin R12 policy requires that any application on this site is supported by a masterplan for both this designation and the R4 site to the south, a Transport Assessment to assess the transportation implications of the development, Flood Risk Assessment to assess the impact of the development in relation to flooding on site and elsewhere and a Habitats Survey to demonstrate that development will not adversely impact on important habitats or species. None of this information has been provided and as a consequence it is not possible to fully assess the impact of the development. The proposal is therefore contrary to policies H1, E2, EP7, T2, IMP1, IMP2 and Elgin R12.

The R12 policy also states that development on this site is constrained until roads improvements (TSP 3,21, 22, 23 and 24) have been provided and along with connectivity to adjacent development and routes to schools. Two separate accesses to the site will be required and Bilbohall Road is likely to require widening. It is noted that the U90E Bilbohall Road which serves the site takes access of the U17E Wards Road via a single land bridge over the railway line. The number of units on the nearby R1 Bilbohall development has been restricted until an alternative access can be provided. None of the required transport improvements have been completed. Until the necessary improvements have taken place and it can be demonstrated that there is sufficient infrastructure to accommodate this development any development on this site would be considered premature and contrary to policies H1, T2, IMP1, IMP2 and Elgin R12.

The R12 policy also requires that Knockmasting Wood is retained and new structural planting is required to successfully integrate the development into the landscape. The current application site has been cleared of trees and the proposal would not result in any tree loss. The submitted planning statement indicates that the applicant intends to implement a long term landscaping programme across the designated site however no further information in relation to this has been included with the current application. In the absence of any information in relation to the protection and retention of

existing trees or the requisite future planting it is not possible to demonstrate that there will be no adverse impact on the wider woodland or the surrounding landscape. The application is therefore contrary to policy H1, ER2, IMP1, IMP2 and Elgin R12.

The submitted planning statement acknowledges the lack of supporting information but contends that this application should be treated as an acceptable departure because the site is a brownfield site that is visually separate from the rest of the designated site. It is stated that the site was previously a borrow pit which has led to this part of the designated site being bare of trees and produced the significant change in levels visible on site today. These points are noted and it is recognised that there is a visual distinction between the application site and the wider designation. Nonetheless the application site is part of designated site identified in the LDP. Piecemeal development has the potential to prejudice the development of the remainder of the site and could result in a development that is unacceptable in terms of placemaking, layout, access, servicing and infrastructure. Furthermore the application has failed to provide sufficient supporting information in relation to transport, flood risk and habitats and has been brought forward ahead of improvements to the surrounding transportation network that are required to accommodate further development in this location. The proposal is premature and lacks sufficient information to demonstrate development on this site will not prejudice the development of the wider designated site. The proposal is contrary to policy and as such is recommended for refusal.

Access and Parking (T2 & T5)

The Transportation Section has objected to the proposal on the grounds that the application proposes the formation of a new access onto the U90E Bibohall Road where visibility is severely restricted by the adjacent embankment and vertical alignment of the road. The submitted plans do not demonstrate that the required visibility splay can be achieved and do not take cognisance of the significant change in levels between the road and the land to the north of the access. If approved the current access would give rise to conditions detrimental to the safety of road users contrary to policy T2. This forms one of the reasons for refusal.

There is sufficient space within the site to provide adequate parking and turning. This element of the proposal would accord with policy T5.

Encroachment on the Elgin Countryside Around Towns (CAT) (E10)

The R12 designation represents the extent to which Elgin should expand to the west during the lifetime of the current Development Plan. The land immediately to the west is identified as CAT and as such there is a presumption against built development that does not involve an existing use or are necessary for agricultural, forestry or low intensity tourism or recreation. The proposed access track runs south west from the application site across the CAT to the join the public road. The aim of the policy is to prevent urban sprawl and retain a distinction between the countryside and the town. While the encroachment on the CAT is small and purely for access it would undermine the distinction between the edge of the settlement and the wider countryside and would contribute to an erosion of the rural character of the area. This element of the proposal is therefore considered to be contrary to policy E10.

Siting, Design and Materials (H1 & IMP1)

The proposed house is a 'T' shaped 1 ¾ storey building. It has been designed in a principally modern style but does have a broadly traditional form with a pitched roof and square gables. The house would be finished in a synthetic render with natural slate on the roof. The design and materials are generally acceptable and would accord with policy.

Recommendation

The proposal is considered premature as it does not provide sufficient information in relation to the development of the wider designated site and has come forward before necessary improvements to the surrounding transport infrastructure have been carried out. The proposal is not supported by the necessary supporting information including a masterplan, comprehensive layout, landscaping

proposals, a drainage details, and access details to ensure that the overall site is not developed in a piecemeal way. The application also lacks a Transport Assessment to allow full assessment of the transportation implications, Flood Risk Assessment which is required to identify the extent of flood risk to the site and surrounding area and a habitats survey to demonstrate that the development will not adversely impact on valuable habitats or species. The open space, affordable and accessible housing provision and other developer contributions would also be prejudiced as the final number/amount that was required as part of any future scheme would be at a reduced level. It is also noted that road constraints identified in the R12 policy have not been addressed. The proposal is considered to be premature until these matters have been addressed.

The applicant's have sought to argue that the proposal is an acceptable departure on the grounds that application site is visually distinct from the remainder of the designated site and development here would not prejudice the development of the rest of the site. These comments are noted but the application site is within the designated site and piecemeal development would undermine the aims of the policy and make it difficult to secure an appropriate form of development across the site in terms of placemaking, access, landscaping and drainage. In addition the application has been made in advance of the transport improvements required for the development being implemented.

Furthermore the application has failed to demonstrate that a safe access to the site can be provided and the proposed access encroaches on the protected CAT around Elgin.

The proposal is contrary to policy and as such is recommended for refusal.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

None

| HISTORY | | | | |
|----------------|-------------|--|------------------|--|
| Reference No. | Description | | | |
| | | | | |
| | Decision | | Date Of Decision | |

| ADVERT | | |
|------------------|--|----------------|
| Advert Fee paid? | Yes | |
| Local Newspaper | Reason for Advert | Date of expiry |
| Northern Scot | No Premises Departure from development plan | 17/09/15 |
| PINS | No Premises Departure from development plan | 17/09/15 |

| DEVELOPER CONTRIBUTIONS (PGU) | |
|--------------------------------------|-----|
| Status | N/A |

| | | |
|---|--|--|
| DOCUMENTS, ASSESSMENTS etc. * | | |
| <i>* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc</i> | | |
| Supporting information submitted with application? | YES | |
| Summary of main issues raised in each statement/assessment/report | | |
| Document Name: | Planning Statement | |
| Main Issues: | <ul style="list-style-type: none"> • Background to proposal • Policy context | |

| | | |
|--|--|----|
| S.75 AGREEMENT | | |
| Application subject to S.75 Agreement | | NO |
| Summary of terms of agreement: | | |
| Location where terms or summary of terms can be inspected: | | |

| | | | |
|---|---|--|----|
| DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs) | | | |
| Section 30 | Relating to EIA | | NO |
| Section 31 | Requiring planning authority to provide information and restrict grant of planning permission | | NO |
| Section 32 | Requiring planning authority to consider the imposition of planning conditions | | NO |
| Summary of Direction(s) | | | |

Appendix 7: City of Edinburgh Council v Secretary of State for Scotland (1998) SC(HL) 33. Source:
<http://swarb.co.uk/city-of-edinburgh-council-v-secretary-of-state-for-scotland-and-another-same-v-same-conjoined-appeals-hl-31-oct-1997/>

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swarb.co.uk

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Criminal Evidence (429)
Criminal Practice (1,995)
Criminal Sentencing (1,141)
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Discrimination (1,498)
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Equity (546)
Estoppel (195)
European (9,260)
Evidence (299)
Extradition (479)
Family (1,008)
Financial Services (387)
Health Professions (1)

PLANNING, SCOTLAND

CITY OF EDINBURGH
COUNCIL -V- SECRETARY OF
STATE FOR SCOTLAND AND
ANOTHER; SAME -V- SAME
(CONJOINED APPEALS); HL 31
OCT 1997

© JULY 2, 2015 DLS LEAVE A COMMENT

References: Gazette 05-Nov-1997, Times 31-Oct-1997, [1997] UKHL 38, [1997] 1 WLR 1447, [1998] 1 All ER 174, 1998 SC (HL) 33

Links: [House of Lords](#), [Bailli](#)

Coram: Lord Clyde, Lord Browne-Wilkinson, Lord Mackay of Clashfern, Lord Steyn, Lord Hope of Craighead

The Listed buildings registers are to be read consistently; the trading level is a material consideration in listed buildings consent applications. The weight to be given to a material consideration once identified was a matter of judgment for the decision maker alone. Lord Clyde said: 'In the practical application of section 18A, it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the questions 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 properly to 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 the light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse.'

As to the need to identify the property, he said: 'the form of notice does not require a description of the building to be given. The assumption is that the name of the building will be sufficient to identify what is in the list.'

Statutes: [Town and Country Planning \(Scotland\) Act 1972 18A](#)

This case is cited by:

- Cited – [Regina -v- Rochdale Metropolitan Borough Council](#), Ex

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