

LOCAL REVIEW BOARD

STATEMENT OF APPEAL

*NEW HOUSE AT NETHER TOMLEA, ARCHIESTON,
MORAY*

NOV 2015

(Revised 25 Nov 2015)

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Our Reference:	15/0035/DORAN
Local Authority:	The Moray Council
Planning Application Ref:	15/01263/APP
Application Proposal:	New House on site at Nether Tomlea, Archiestown, Moray
Site Address:	Nether Tomlea, Archiestown, Moray, AB38 9JS
Appellants:	Mr B Doran
Date Application Validated:	
Council Decision Notice Date:	2 nd September 2015
Reason for Refusal:	<p><i>The proposal is contrary to the provisions of the adopted Local Development Plan 2015 (Policies H7 and IMP1) and the associated Supplementary Planning Guidance "Housing in the Countryside"</i></p> <p><i>"This is due to the siting and location of the proposed dwellinghouse, which, when considered alongside other approved developments within the locality, would result in a cumulative build up of housing development which would be detrimental to the amenity, appearance and character of the surrounding area."</i></p>
Application Drawings & Supporting Documents:	<ul style="list-style-type: none"> • CMD Doc 001 – Approval Documents for original consent at Nether Tomlea (expired) • CMD Doc 002 – Handling Report for original approval • CMD Doc 003 – Refusal Documents re new application. • CMD Doc 004 – Report of Handling for new application • CMD Doc 005 – Extract of new application drawings

1. The following Statement of Case, submitted by **CM Design Town Planning & Architectural Consultants**, has been prepared to support a Local Review Board submission relating to a :

Re-application of a previously expired consent - for a new house site.

1.2 This case relates to a new and revised application lodged in 2015 following expiry of a previous approval from 2011.

1.3 The appellant wishes to demonstrate 1) that the renewal of this consent will present absolutely no detrimental impact on the locale and 2) that the concerns of cumulative impact are unfounded and finally that 3) the reasons for approval of this application in 2011 remain valid for this new application

1.4 No objections to this application were raised by neighbours or consultees.

1.5 Whilst regretting that the original consent (11/01402/OUT) was allowed to expire, the appellant has now sold the farmholding at Nether Tomlea and wishes to remain in the area and upon a small portion of the land previously managed.

1.6 The proposed site remains in the same general location as the previously expired site. The Planning Authority have raised no issue or objection to the siting and design and have merely rejected the application on the grounds of cumulative build up.

1.7 The appellant wishes to dispute the grounds by which “cumulative build up” has been arrived at.

2. Background.

2.1 Nether Tomlea is a manageable family small holding, extending to circa 14 acres and has enjoyed being worked for a mixture of purposes over the years but mostly rough grazing for the appellants own purposes.

2.2 Keen to remain on the land but also keen to downsize and allow others to run the small holding, the appellants applied for and secured consent for a new house site in 2011 (App ref 11/01402/OUT refers). This was approved in Aug 2011 - **DOC 001 refers**

2.3 Due to unfortunate circumstances, this consent was unwittingly allowed to expire on 24th Oct 2014 and the appellant was not aware that similar consent might not be forthcoming in the future.

2.4 On 8 July 2015, the appellant attempted to renew the consent by lodging a new application with (**CMD Doc 005**) revised site boundaries but was met with resistance from the Planning Authority who were minded that too much development had taken place in the area and that “the limit” had been met.

2.5 The Appellant would contend that there has been no net increase in development in the appropriate vicinity, since their original consent expired and furthermore, that the new application could be deemed acceptable on all grounds and including the arguable “cumulative impact” being suggested in this case.

2.6 The Appellant also wishes to make clear that no objection from any other quarter or consultee was received in response to this new application.

2.7 A meeting was held with the Planning Authority prior to this application being refused and in which it was made clear that the principle reason for refusal was the need to limit further development in the vicinity of the application site.

2.8 Planners saw no merit in the history of the applicants’ previous approval, nor merit in the fact that the development continued to be well accommodated by the landscape and landform.

2.9 Planners suggested that the current Development Plan demanded that a more stringent approach be taken to over development but could not define by what terms “over development” is calculated.

2.9.1 It is clear to the appellant that the criteria of this new Policy is being applied wrongly in this case and that sufficient **material considerations** are available to merit a more discerned consideration and approval.

3. Statement of Case

3.1 Section 25 of the Town and Country Planning (Scotland) 1997 Act (as amended) requires that planning applications be determined in accordance with the development plan unless material considerations require otherwise. There are significant material considerations in this case.

3.2 The sole reason for refusal of this application is –

“The proposal is contrary to the provisions of the adopted Local Development Plan 2015 (Policies H7 and IMP1) and the associated Supplementary Planning Guidance “Housing in the Countryside”

*“...due to the siting and location of the proposed dwellinghouse, which, when considered alongside other approved developments within the locality, **would result in a cumulative build up** of housing development which would be detrimental to the amenity, appearance and character of the surrounding area.”*

3.3 It is the appellant’s opinion that their need for a new home at Nether Tomlea - previously approved in 2011 – would have absolutely **no impact** upon the immediate or wider locale and **does not**, in itself, tip the balance of what might considered to be a cumulative build up.

3.4 Whilst asking Board members to consider the site on its own merits and within the context of the previous approval, the appellant wishes to clearly demonstrate some **material considerations** that have not yet been taken into account in the determination of this case – as follows.

- there has actually been a **reduction of approved development** in the vicinity of the application site since the appellant first secured consent due other expired consents.
- the scale of adjacent development in the area during the initial approval **was greater** that it is at present.
- any new consents approved since that time has been mitigated by constant **expiry of other applications** in the area.

3.5 This statement of case seeks to invite Board members to also consider how the “traditional pattern of settlement” in the vicinity of the application site has already become sufficiently diverse to allow support for this application.

3.6 Compliance with Policy will be demonstrated later in this statement.

4. Scale of nearby development – cumulative build up?

4.1 There is little doubt that the Spey Valley is a popular area in which to live and that the desire for rural dwellings continues to drive a portion of the economy in Moray.

4.2 The area around Archiestown does indeed attract great interest from developers and has enjoyed a period of growth over recent years but never surpassing the number of homes that already stretch along the road to Archiestown.

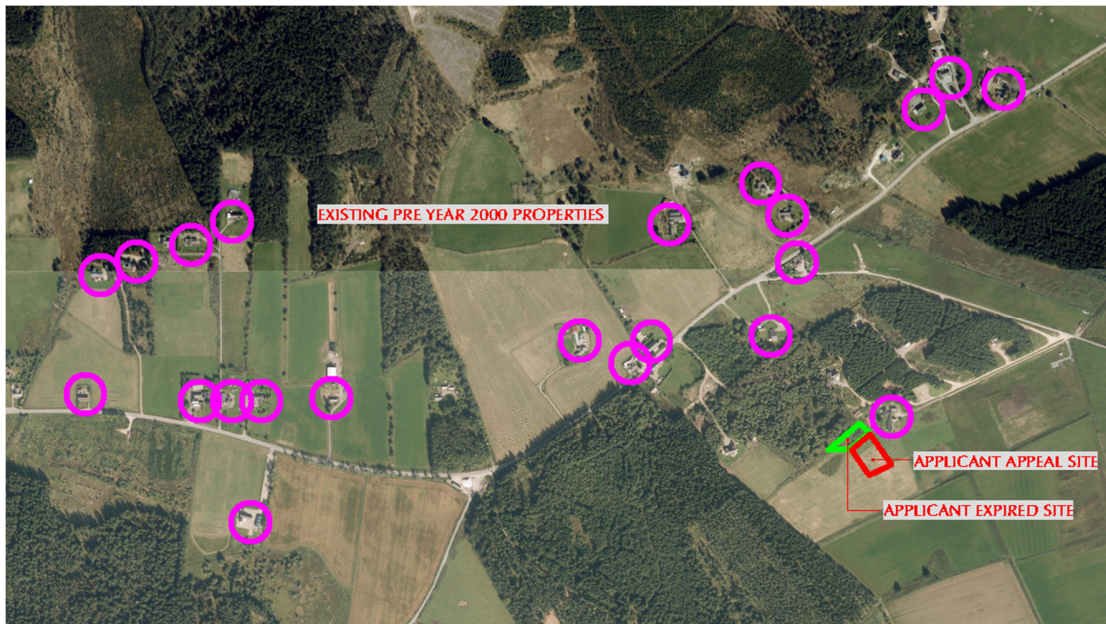
4.3 Whilst previous consents continue to expire, the opportunity arises for planners and developers to look at each application on its own merits and not simply in terms of the number of sites approved historically.

4.4 Rural Housing contributes significantly to meeting the targets set by Moray Council for housing across the Local Authority area and opportunities to serve that need should not be dismissed on such subjective terms as in this case.

4.5 The 2km stretch of road leading to Archiestown from Nether Tomlea currently serves over **21 properties** which pre-date planning application records. These are houses which currently contribute to the dispersed and diverse pattern of settlement that this area of Moray is recognised for.

Pic

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existing properties pre year 2000 and beyond.

4.6 Since the year 2000, over the last **16 years**, the Local Authority Planning Portal indicates that **14 new houses** are currently approved for construction with extant consents in place in the vicinity of Nether Tomlea.



Pic – current extant approved sites built or pending

4.7 Since the year 2000, at least **6 consents** for new houses in this area have **expired**. This includes for the appellants previous house site and approval. This reduction in **previously approved development** provides decision makers with some assurance that the risk of cumulative impact is being reduced naturally and substantially.

4.8 Moreover, it would appear that **only 2 new** approvals have been granted in the vicinity of Nether Tomlea, **since** the appellants first received consent in 2011.

4.9 There is therefore **a net reduction of approved housing** in the area by at least **4 houses** since the appellant first secured consent and perhaps allows Planners some leeway to consider allowing previous housing provision levels to be maintained, where appropriate.

4.9.1 There is therefore a clear opportunity for members to consider this application on its own merits and not in the context of a presumed over development of the wider area.

4.9.2 It is therefore NOT THE CASE that this new application represents a cumulative build up in the wider area and this stance should be reconsidered.

5. Policy Compliance

5.1 The New Moray Local Development Plan replaced the Moray Structure Plan 2007 and Moray Local Plan 2008 and is supported by Supplementary Guidance (SG) documents to expand upon Policy statements within the Plan

5.2 Section 2 of MLDP sets out early aims of the Local Authority, to: “...invite a growing population, new residents, sufficient housing and high quality development”

5.3 This application, whilst clearly serving the appellants own needs to rescue the previous consent, also serves the purposes of the MLDP in offering appropriate space for new housing and population of rural areas.

5.4 Policy H7 – New Housing in the Open Countryside, **presumes in favour** of an application provided certain criteria are met.

Policy H7 New Housing in the Open Countryside

This policy assumes in favour of an application for a new house in the open countryside provided all of the following requirements are met:

Siting

- a) It reflects the traditional pattern of settlement in the locality and is sensitively integrated with the surrounding landform using natural backdrops, particularly where the site is clearly visible in the landscape. Obtrusive development (i.e. on a skyline, artificially elevated ground or in open settings such as the central area of a field) will not be acceptable;
- b) It does not detract from the character or setting of existing buildings or their surrounding area when added to an existing grouping or create inappropriate ribbon development;
- c) It does not contribute to a build-up of development where the number of houses has the effect of changing the rural character of the area. Particular attention will be given to proposals in the open countryside where there has been a significant growth in the number of new house applications; and,
- d) At least 50% of the site boundaries are long established and are capable of distinguishing the site from surrounding land (e.g. dykes, hedgerows, fences, watercourses, woodlands, tracks and roadways).

Justification

The Plan aims to allow housing in the open countryside that can be easily absorbed into the landscape. New development should be low impact and reflect the character of the surrounding area in terms of the traditional pattern of settlement and the scale and design of housing. The introduction of suburban layouts and house styles and the incremental build up of new houses have the potential to alter the rural character and detrimentally impact on the area's high quality rural environment.

Proposals that add to an existing grouping, such as an established re-use or rehabilitation scheme, will be more satisfactorily integrated where they connect through built form, layout and landscape features. Development that adds to an existing suburban layout should be avoided. Infill development along a road or landscape feature may be appropriate where this does not detract from the character or setting of existing houses. Innovative modern design and energy efficiency measures are encouraged to promote sustainable development.

5.5 It is clear from Refusal Documents that only compliance with paragraph (c) of this Policy is being disputed. This paragraph requires that development “...does not contribute to a build-up of development where the number of houses has the effect of changing the rural character of the area. Particular attention will be given to proposals in the open countryside where there has been a significant growth in the number of new house applications.”

5.6 The appellant would contend that this Policy cannot be applied so fundamentally to the area of Nether Tomlea, because the current settlement pattern has evolved significantly over the last 20 years and in any case we strongly contend that this single application WILL NOT have the effect of changing the rural character of the area.

5.7 Looking at settlement pattern in detail one can see that development on the exposed north side of the B9102 is distinctly linear whereas development on the better screened south

side is and has always been allowed to be more closely related and using the tree lines for natural screening.

5.8 In all other respects of Policy H7, this application has been deemed by the Planning Authority to comply.

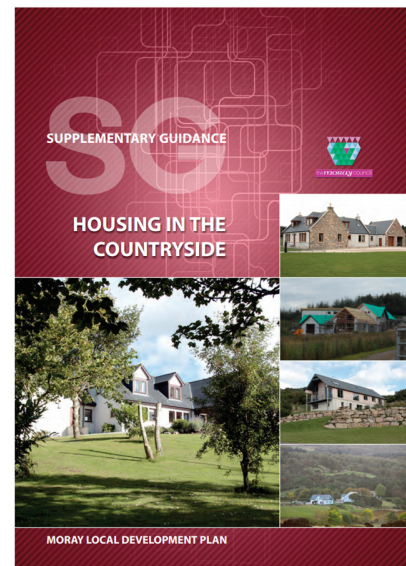
5.9 Supplementary Guidance (SG) – Housing in the Countryside - provides advice on the key aspects of Policy H7 – New Housing in the Open Countryside – to provide a consistent approach to decision making.

5.9.1 Section 4 of Supplementary Guidance on Policy H7 suggests that *“where a considerable level of development has taken place, another dwelling may adversely impact on the distinctive rural qualities of the area (ie open appearance or ambience)”*

5.9.2 It can be clearly seen, that this proposal will not present any impact whatsoever on the rural qualities of the area, as it cannot be seen from any close quarter. It is adequately screened from almost all directions by woodland and elevated foreground.

This was the basis on which previous consent was granted.

5.9.3 Paragraph (i) also suggest that *“a new dwelling that is positioned sensitively within a cluster of existing buildings or adopts the spacing of a dispersed patter of settlement will generally be acceptable”*.



5.9.4 The appellant would contend that the wider settlement pattern is defined by both linear development along the main carriage way AND also by clusters of housing screened by woodland. On this basis, it is suggested that this application conforms fully with the aims of this guidance.

5.9.5 Policy IMP1 – Development Requirements – is not a new Policy and was in force in respect of the original application at Nether Tomlea.

5.9.6 All the criteria of IMP continue to be met by this application in all respects.

POLICY IMP1: DEVELOPMENT REQUIREMENTS

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It must meet 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. adequate roads, public transport, and cycling and footpath provision must be available, at a level appropriate to the development,
- d. adequate water, drainage and power provision must be made,
- e. sustainable urban drainage systems should be used where appropriate, in all new developments
- f. there must be adequate availability of social, educational, healthcare and community facilities,
- g. the development should, where appropriate, demonstrate how it will incorporate renewable energy systems and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria,
- h. provision for the long term maintenance of public landscape and amenity areas must be made,
- i. conservation of natural and built environment resources must be demonstrated,
- j. appropriate provision to deal with flood related issues must be made, including the possibility of coastal flooding from rising sea levels and coastal erosion,
- k. pollution, including ground water must be avoided,
- l. appropriate provision to deal with contamination issues must be made, and
- m. the development must not sterilise significant workable reserves of minerals, prime quality agricultural land, or preferred areas for forestry planting,
- n. where appropriate, arrangements for waste management should be provided.

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, power, facilities. Particular emphasis is placed on providing pedestrian, cycle and public transport access to the development, and the use of sustainable urban drainage systems and the incorporation of renewable energy equipment and systems, and sustainable design and construction into the development in order to promote sustainability within Moray. Flooding is an important consideration particularly within the Laich of Moray and needs to be adequately addressed. Similarly, pollution issues in relation to air, noise, ground water and ground contamination must be adequately addressed to provide proper development standards.

CONFORMS TO:

The policy conforms to SPP1 on the Planning System and to national planning guidance and advice generally

POLICY CROSS REFERENCE/ADDITIONAL GUIDANCE:

Other policy requirements generally.

6. Conclusion

6.1 This statement of case has demonstrated

- Sufficient “material considerations” in terms of the **Town and Country Planning (Scotland) 1997 Act** exist to allow this appeal to be upheld – *see foregoing paragraph 3.4*
- Sufficient previous permissions in the area have expired to mitigate against risk of over development in this case. - *see foregoing paragraph 4.7*
- This single application cannot be deemed to be significant enough to contribute to “over development”
- Supplementary Guidance supports this application in its limited impact upon the traditional pattern of settlement and comfortable integration into the locale - *see foregoing paragraph 5.9.2*
- This application is not disputed to meet the criteria of all other Policies and Guidance.- *see foregoing section 5*

6.2 It is respectfully requested that consideration be given to upholding this Appeal.

C.J.S Mackay

Principle Designer & Planning Consultant

CM Design