

**Site adjacent to The Mill House, Sheriffmills, Elgin – Mr S Masson**

September 2010

**Grounds for Review of Refusal of Planning Permission**

Planning Application Ref No 10/00745/APP



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## **Appendices** - Separate Document

- Appendix 1 - Copy of Planning Application Form, Refusal Notice and Refused Plans
- Appendix 2 - Case officers Report of Handling for planning application
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**1.0 Introduction**

1.1 These grounds for review of a decision to refuse planning permission for a house at Sheriffmills Elgin are being submitted under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended). This notice of review has been lodged within the prescribed three month period from the refusal of permission dated 24<sup>th</sup> August 2010.

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

## **2.0 Summary**

- 2.1 The proposal under review is for a modest single house on a very well screened and enclosed site within a substantial existing cluster of long established development at Sheriffmills Elgin. There are existing houses, a vehicle garage and a palliative care unit to the South, East and West of the site. Planning consent has also been granted for a large new garden centre to the South of the site at Sheriffmills.
- 2.2 The key planning issue is the relationship of the proposal to Local Plan Policy Elgin ENV6 (Green Corridors/Natural/Semi Natural Greenspaces) and Local Plan Policy E4 (Green Spaces). The Elgin ENV6 designation is a large and dispersed designation covering a wide range of separate areas which the Local Plan identifies as contributing to the environment and amenity of Elgin. The umbrella policy for all ENV designations is Policy E4 which precludes development that would cause the loss of, or impact on, an ENV designation unless the proposal is for a public use.
- 2.3 The following grounds for review show that the proposal does not involve the loss of an ENV area nor does it have an adverse impact on the ENV designation within which it is located. This is because the site is only a very small part of the much wider and dispersed Elgin ENV6 designation and the defined, enclosed and very well screened nature of the site, within the existing cluster of development at Sheriffmills, means the development would have no adverse impact on the designation.
- 2.4 There are no objections to the proposal from neighbours, the public or statutory

consultees.

### **3.0 Background to Handling of Application**

3.1 The application (Appendix 1) was dated 11<sup>th</sup> May 2010 and was refused under the Councils Delegation Scheme by the case officer on 24<sup>th</sup> August 2010. The refusal notice and related plans are part of Appendix 1.

3.2 The reasons for refusal state that;

*“The proposal is contrary to policy E4 (Green Spaces) and Elgin settlement policy ENV 6 as contained in the Development Plan in that;*

*a) it is not for a public use which outweighs the value of the green space;*

*b) it would impact on the amenity value of the site; and*

*c) it would establish and undesirable precedent for further such development, leading to erosion of the character and amenity for which the area is designated.”*

3.3 The case officer’s report of handling for the planning application was dated 11<sup>th</sup> August 2010 and is attached as Appendix 2.

3.4 The report confirms that despite the planning application being advertised in the local press there were no objections from neighbours or the public. It also confirms that there were no objections from statutory consultees. Although SEPA had objected initially, on grounds related to flooding, this was withdrawn following the submission of amended plans to ensure that all of the proposed site for the house was outwith the area potentially affected by flooding as shown on SEPA’s indicative flood map. The report also confirms that the Councils Flood Alleviation team were happy with the

revised plans.

old mills, elgin



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Drawing Title	Scale at A3	Date:	Drawing No.
elevations	1:1000	april 10	010/061/02

Copy of elevations submitted with application – NTS. Full size version in Appendix 1.

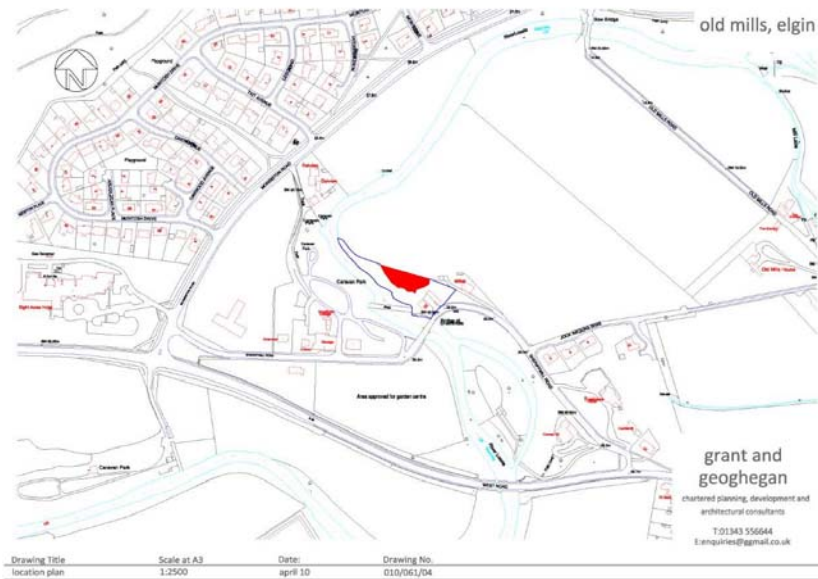
#### 4.0 The Proposal

4.1 The proposal is for a modest single dwelling with access onto Sheriffmill Road near Bridge of Sheriffmills.

4.2 The design of the proposed house is single storey in scale, of traditional appearance and finish, with natural slate on the roof and wetdash harl on the walls. The reasons for refusal do not reject the design of the house which can therefore be considered acceptable in relation to the Councils planning policies.

4.3 The present ground levels will be lowered to accommodate the house and access.





Copy of location plan submitted with application – NTS. Full size version in Appendix 1.

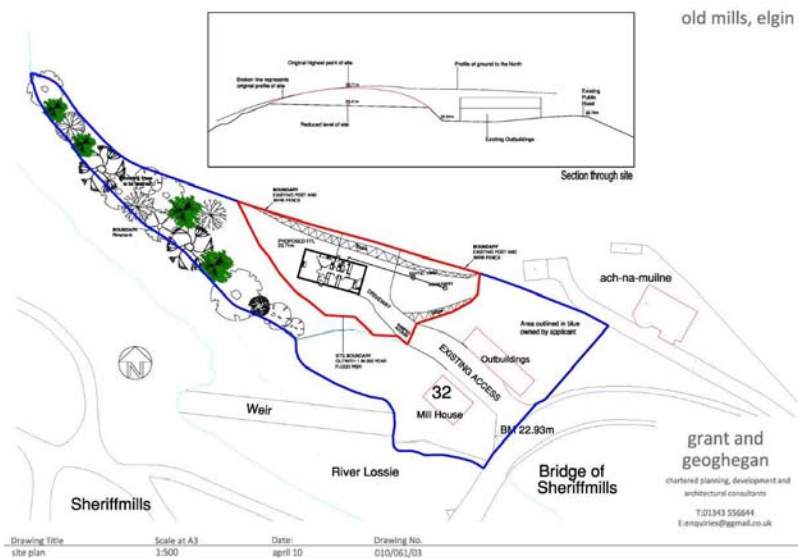
## 5.0 The Site

5.1 The site is located within a long established cluster of development on the West side of Elgin at Sheriffmills. In the immediate vicinity of the site to the South, East and West there is housing, a substantial vehicle garage and a palliative care unit. Planning consent has also been granted for a substantial new garden centre to the South of the site. The position of the site in relation to these properties is shown on the plan with the photographs at the end of this document as well as on the site plan with the planning application (Appendix 1).

5.2 The plot is more or less triangular in shape. It extends to 990 sqm (0.09ha/0.22ac) and is an area of overgrown rough ground historically associated with the adjacent Mill House and large outbuilding to the East.

5.3 This is a very secluded and enclosed site. It is screened from the South by substantial mature trees. These trees are under the control of the applicant and will be retained as shown on the plans. To the North the site will be enclosed by a significant drop in levels between the plot and fields beyond. There is an existing house and large outbuilding to the East at Mill House.

5.4 The substantial screening and enclosure around the site mean



Copy of site plan submitted with application – NTS. Full size version in Appendix 1.

that the proposed house will be all but hidden from view from potential public vantage points on Sheriffmills Road and the A96 (West Road) further to the South. This contrasts with the majority of the surrounding buildings and approved garden centre which are open to view from both Sheriffmills and the A96.

5.5 An application for a house on the site was refused in 2005 on grounds related to policies in the previous Moray Local Plan 2000 for development in the then Lossie Corridor designation after which the garden centre referred to above was approved to the South of the site.

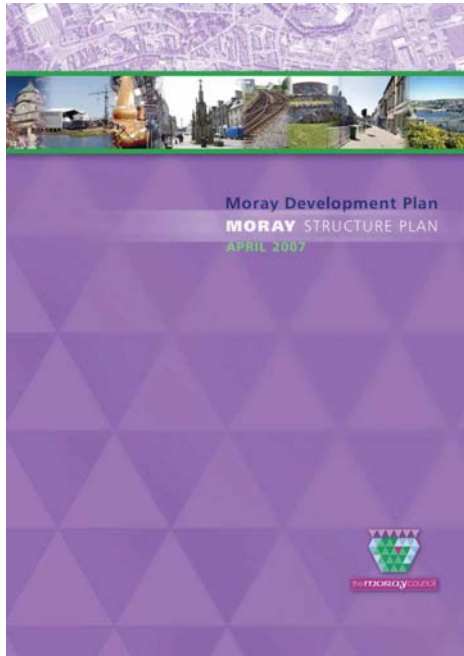
## **6.0 Development Plan Policy**

6.1 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise.

6.2 The Development Plan for Moray comprises the Moray Structure Plan 2007 approved in April 2007 and the Moray Local Plan adopted in December 2008.

6.3 Material considerations are not defined statutorily. Examples of possible material considerations are set out in an Annex to Scottish Government Circular 4/2009, Development Management (Appendix 3), and they include;

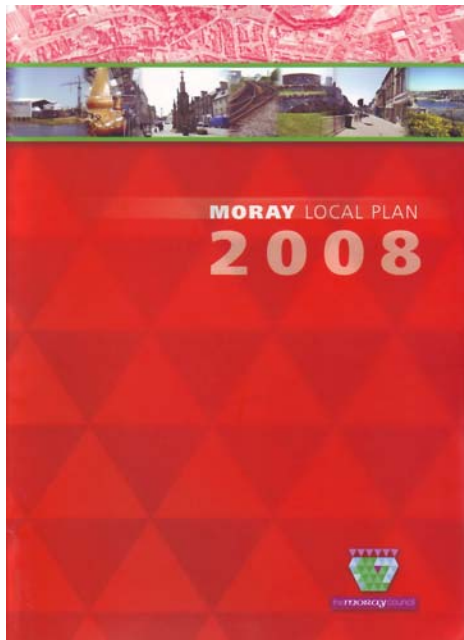
- National Scottish Planning Policy
- The environmental impact of a proposal
- The design of a development and its relationship to its surroundings
- Access, provision of infrastructure and planning history of the site
- Views of statutory consultees
- Legitimate public concern, or support, expressed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



Moray Structure Plan 2007

## 7.0 **Moray Structure Plan 2007 (Appendix 4)**

- 7.1 The Structure Plan supports appropriate development within settlement boundaries and the development of infill and brownfield sites provided the environmental impact is carefully considered (p16).



Moray Local Plan 2008

## 8.0 Moray Local Plan 2008 (Appendix 5)

8.1 Under policies H3 (New Housing in Built-Up Areas) and IMP1 (Development Requirements) the Local Plan allows for new housing within settlement boundaries provided it does not adversely affect the surrounding environment and is integrated into the surrounding landscape with scale density and character also being appropriate to the surrounding area.

8.2 The site is part of the large and fragmented ENV6 designation in the Elgin settlement statement (p143). This designation is entitled “Green Corridors/Natural/Semi Natural Greenspaces” and the text describes them as being at “The Wards, Lesmurdie, Bishopmill, Hamilton Drive, Waulkmill Grove, Morriston Playing Fields and Edgar Road”

8.3 Text preceding all of the Elgin ENV designations states that they are identified as open spaces which contribute to the environment and amenity of Elgin and all are subject to policy E4 (Green Spaces). This is the umbrella and controlling policy for all of the ENV designations. It precludes development which would “cause the loss of, or impact on, the areas identified under the ENV designations” unless it is for a public use that clearly outweighs the value of the green space.

8.4 In addition there are a range of other Local Plan policies which apply relating to infrastructure, servicing, flooding and tree requirements as follows;

- Policy T2 – Provision of Road Access
- Policy T5 – Parking Standards

- E3 – Tree Preservation Orders and Control on Trees
- Policy EP5 – Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)
- EP7 - Control of Development in Flood Risk Areas
- EP9 – Contaminated Land
- Policy EP10 – Foul Drainage
- Policy IMP3 – Developer Contributions

8.5 In general terms these policies seek to ensure that new development is provided with adequate infrastructure, is protected from flooding, is free from potential contamination and can integrate with existing trees. The reasons for refusal show that the issues of concern do not relate to these policies.



Scottish Planning Policy (SPP)

## **9.0 National Planning Policy and Guidance**

9.1 National Planning Policy and Guidance is a material planning consideration to be taken into account in the consideration of planning applications. It is set out in Scottish Planning Policy (SPP) and Planning Advice Notes (PAN's).

## **9.2 Scottish Planning Policy -SPP - (Appendix 6)**

9.3 Scottish Planning Policy sets out the Scottish Governments overarching policy on land use planning.

9.4 The purpose of planning set out in the SPP includes being about where development should and should not happen and how it interacts with its surroundings which involves promoting and facilitating development while protecting and enhancing the natural and built environment (para 3).

9.5 SPP promotes new housing which takes account of its setting, surrounding landscape, topography, character and appearance (para 78).

9.6 Infill sites are recognised as being able to make a useful contribution to the supply of housing land and should respect the scale, form and density of the surroundings (para 82)

## **10.0 Main Issues**

10.1 Having set out the policy background it is now necessary to consider the main issues that arise from the proposal in relation to this policy context. The primary issue is considered to be;

- the principle of development of the site for a single house in terms of Local Plan policies, Elgin ENV6 and E4.

## **10.2 Principle of the Development**

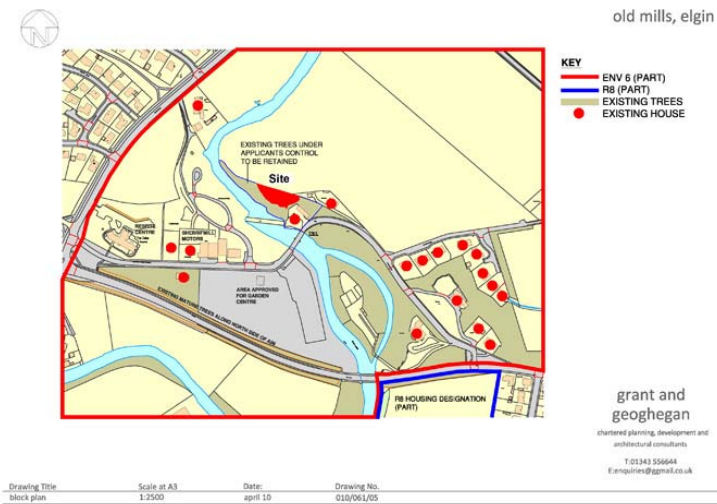
10.3 This site is well within the settlement boundary for Elgin. National, Structure and Local Plan policies allow for development such as this within the settlement boundary provided it integrates with the surrounding landscape, topography, appearance and character of the area.

10.4 The use of infill sites is promoted through policy. The proposed plot is effectively infill between the existing dwelling to the East at Mill House and the defining and enclosing landscape features to the North and South of the site, i.e. the mature trees to the South of the plot and the rising slope to the North.

10.5 The primary issue with this proposal is its relationship to the Elgin ENV6 designation and the related E4 policy requirements.

10.6 The text preceding all of the ENV designations for Elgin states that they are “open spaces which contribute to the environment and amenity of Elgin”. The ENV6 designation is a large and fragmented designation dispersed throughout the town.





Location of site in relation to nearby properties at Sheriffmills including houses, vehicle garage, care unit and area approved for garden centre. Full scale version at end of document with photographs.

- 10.7 The plan also makes it clear that the Elgin ENV designations are identified as “open spaces which contribute to the environment and amenity of Elgin”. Whilst this may be the case with the broader areas of undeveloped land within the ENV6 designation to the South of Sheriffmills beyond the A96 and across the fields to the North of Sheriffmills, it is also the case that Sheriffmills itself is not an open space as such. It is a recognised, and substantial, cluster of development within the ENV6 designation. This is clearly shown on the plan with the photographs at the end of this document. There are other clusters of development within the ENV6 designation where new development has been allowed eg at Oldmills to the North East. A house on the site will be an integral part of the existing development at Sheriffmills and will not increase or change the impact of this grouping on the ENV6 designation as the plot is very well screened and hidden from view. It will certainly not impact on any perception of the wider designation as an “open space”. It also needs to be borne in mind that planning consent has been granted for a substantial new garden centre in an open location within the ENV6 designation to the South of the site which will further consolidate and increase the impact of the overall level of development in the vicinity at Sheriffmills.

- 10.8 Policy E4 is the umbrella policy for the ENV designations. It states that development which would cause the loss of, or impact on, areas identified under the ENV designations in settlements will be refused unless they are for a public use that clearly outweighs the value of the “green space”.
- 10.9 Under this policy the starting point is whether or not the development would cause the loss of an area designated as ENV6 or impact on an area designated as ENV6. If the proposal is neither of these then it does not contravene Policy E4. As a matter of fact the proposal does not involve the loss of an area designated as ENV6 under the policy. The site is only a very small part of the much wider and dispersed ENV6 designation which is shown in the Local Plan extracts in Appendix 5. As regards impact on the ENV6 designation the site is a tightly enclosed and very well screened area of ground which is part of the established cluster of development at Sheriffmills within the very much wider ENV6 designation. The impact of the proposed house in this location on the ENV6 designation as an “open space” contributing to the environment and amenity of Elgin will be entirely insignificant. The site itself cannot be seen within the overall ENV6 designation so it does not contribute visually to it and the main amenity feature associated with the site, the mature trees, will be retained.
- 10.10 Even if the view is taken that the proposal is a departure from policy there are material considerations to justify it. It is a requirement under the Planning Act to take material considerations into account when determining planning applications.

10.11 Examples of material considerations are given in Scottish Government Circular 4/2009, Development Management (Appendix 3), and they include;

- The environmental impact of a proposal
- The relationship of a development to its surroundings

10.12 The principal environmental impact to consider in terms of policy is the impact of the proposal on the ENV6 designation. It has been shown above that because of the relationship between the development and its surroundings at Sheriffmills the proposal will have no real impact on the ENV6 designation. As such the impact of any perceived departure from policy is not sufficient to justify refusal of the proposal.

## **11.0 Reasons for Refusal**

- 11.1 The first reason for refusal states that the proposal is not for a public use which outweighs the value of the green space. It is accepted that the proposal is not for a public use. However the need to consider this exception under the policy only applies if the proposal involves the loss of, or impacts on, an area designated as ENV6. It has already been shown that the proposal will not involve the loss of an area designated as ENV6 nor will have an adverse impact on the ENV6 designation.
- 11.2 The second reason for refusal states that the proposal would impact on the amenity value of the site. The site itself is a flat area of rough ground screened by mature trees (to be retained) and the topography of the surrounding landform set within the long established cluster of existing buildings at Sheriffmills. It is not clear from either the reasons for refusal or the case officers Report of Handling (Appendix 2) what adverse effect on the “amenity value” of the site itself is being identified. On the contrary the Report of Handling acknowledges “the merits of trees screening the site and the design/material finishes proposed”. The principal amenity feature related to the site is the existing trees and they will be retained.
- 11.3 The third and last reason for refusal is that the proposal would establish an undesirable precedent for further such development leading to the erosion of the character and amenity for which the area is designated. It has already been shown that, in terms of Policy E4, this proposal will not involve the loss of an area designated as ENV6 nor will it have an adverse impact on the ENV6 designation within which it is located. As such it cannot set a precedent for undesirable development and applications require to be

determined on their merits.

## **12.0 Conclusion**

- 12.1 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise.
- 12.2 The proposal under review is for a modest single house on a very well defined, enclosed and screened site within a substantial existing cluster of long established development at Sheriffmills Elgin. There are existing houses, a vehicle garage and a palliative care unit to the South, East and West of the site. Planning consent has also been granted for a large new garden centre to the South of the site at Sheriffmills.
- 12.3 The key planning issue is the relationship of the proposal to Local Plan Policy Elgin ENV6 (Green Corridors/Natural/Semi Natural Greenspaces) and Local Plan Policy E4 (Green Spaces). The Elgin ENV6 designation is a large and dispersed designation covering a range of areas which the Local Plan identifies as contributing to the environment and amenity of Elgin. The umbrella policy for all ENV designations is Policy E4 precludes development which would cause the loss of, or impact on, an ENV designation unless the proposal is for a public use.
- 12.4 It has been shown that the proposal does not involve the loss of an ENV area nor does it have an adverse impact on the ENV designation within which it is located. This is because the site is only a very small part of the much wider and dispersed Elgin ENV6 designation and the defined, enclosed and very well screened nature of the site, within the existing cluster of development at Sheriffmills, means the development will have no

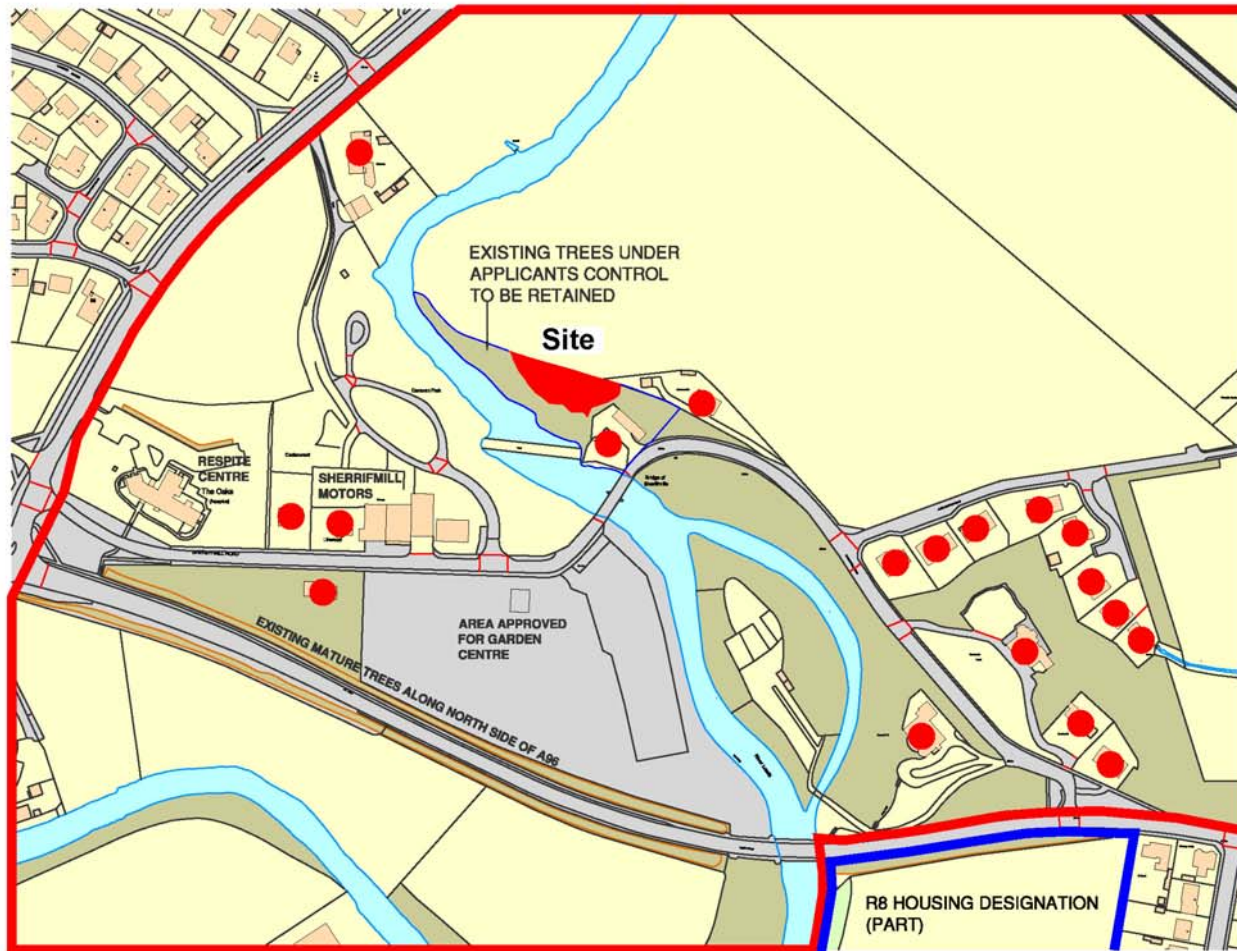
adverse impact on the designation.

12.5 There are no objections from neighbours, the public or consultees.

12.6 It is requested that the planning application be approved.



# old mills, elgin



### KEY

- ENV 6 (PART)
- R8 (PART)
- EXISTING TREES
- EXISTING HOUSE

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Drawing Title  
block plan

Scale at A3  
1:2500

Date:  
april 10

Drawing No.  
010/061/05



**Photograph 1**

Site as viewed from access off Sheriffmill Road.



**Photograph 2**

View from Sheriffmill Bridge. Site hidden behind trees identified on photo.



**Photograph 3**

Site viewed from South towards A96 across area approved for garden centre. Trees screening site shown in photo immediately under text.

