

Site at Westwood, Mosstowie, Elgin - Mr R Fleming

November 2010

Grounds for Review of Refusal of Planning Permission

Planning Application Ref No 10/00746/APP



Prepared by
grant and geoghegan
enquiries@ggmail.co.uk
01343-556644

Contents

- 1.0** – Introduction
- 2.0** - Summary
- 3.0** - Background to Application
- 4.0** – The Proposal
- 5.0** – The Site
- 6.0** – Development Plan Policy
- 7.0** – Structure Plan Policy
- 8.0** – Local Plan Policy
- 9.0** – National Planning Policy and Guidance
- 10.0** – Main Issues
- 11.0** - Reasons for Refusal
- 12.0** - Conclusion
- Photographs of site and surroundings

Appendices - Separate Document

- Appendix 1 - Copy of Planning Application
- Appendix 2 - Case officers Report of Handling for planning application
- Appendix 3 - Circular 4/2009 - Development Management Procedures - Extracts
- Appendix 4 - Moray Structure Plan 2007 - Extracts
- Appendix 5 - Moray Local Plan 2008 - Extracts
- Appendix 6 - Scottish Planning Policy - Extracts
- Appendix 7 - Planning Advice Note 72 (PAN 72) - Housing in the Countryside – Extracts
- Appendix 8 – Approval for new house within CAT nearby to South of site

1.0 Introduction

- 1.1 These grounds for review of a decision to refuse planning permission for a house at Westwood, Mosstowie 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 23rd September 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 application under review is for a modest single dwelling with a very traditional design and finish on an extremely well defined, contained, enclosed and screened site within an existing group of properties, four houses and a children's nursery, on the very Western fringe of the Elgin CAT designation. Within the grouping there is a newly built substantial house beside the nursery which was approved as an acceptable departure from the CAT policy.
- 2.2 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are "material considerations" to justify doing otherwise.
- 2.3 National Planning Policy and Moray Councils Structure and Local Plan policies all encourage well sited houses in the countryside.
- 2.4 The lead policy in the Local Plan for testing the acceptability of the site as a suitable location for a house in the countryside and the proposed design is Policy H8 – New Housing In The Open Countryside. This policy contains specific criteria about the siting and design of new dwellings and it has been shown that the proposal meets the criteria set out in the policy. This is also accepted in the case officers Report of Handling which confirms that there is no issue with the proposal in relation to policies for housing in the countryside.

- 2.5 The single Development Plan policy issue is the relationship of the proposal to the CAT policy which only allows for certain forms of development in the CAT. The proposed house is not one of the exceptions provided for. The aim of the CAT policy is to prevent development sprawl into the countryside, in this case from Elgin.
- 2.6 As part of the process of determining the review it is necessary to take account of material considerations in relation to policy to see if they provide a basis for accepting the proposal. The impact, design and relationship of a proposal to its surroundings are all material considerations and when assessing them in relation to policy it is necessary to take account of the aims and objectives of policy as well as the detailed wording.
- 2.7 The siting and design of the proposal have been accepted in relation to the Councils policies for housing in the countryside which are not part of the reasons for refusal. Therefore we have a proposal which is considered to integrate successfully with its countryside location but still at the same time compromise the CAT policy for the protection of the countryside around Elgin. However it has been shown that this is not the case when taking account of the design and layout of the proposal, characteristics of the site, location of the site in relation to Elgin and its setting of within an existing and established grouping of buildings. This is further emphasised by the recent approval of a substantial new house beside the children's nursery to the South of the site on the basis that it was an acceptable departure from the CAT policy on what is a more open, less defined and enclosed site than that under review.
- 2.8 It is considered that in this case there are good, sound and justifiable reasons for accepting the proposal in relation to the CAT policy on the basis of the material

considerations which have been set out.

3.0 Background to Handling of Application

3.1 The application (Appendix 1) was dated 11th May 2010 and was refused under the Councils Delegation scheme by the case officer on 23rd September 2010.

3.2 The reasons for refusal state that;

The proposal is contrary to policy 2(e) in the Moray Structure Plan and to policy E10 in the Moray Local Plan for the following reasons.

1. *New residential development is involved in an attractive undeveloped location which would erode the distinction between the built up area (of Elgin) and the countryside which Countryside Around Towns (CAT) policy seeks to protect. In relation to CAT policy the proposal does not involve rehabilitation, conversion, limited extension or change of use.*

2. *Further such proposals would be encouraged.*

3.3 The case officers report of handling for the planning application (Appendix 2) was dated 27th August 2010.

3.4 The report confirms that there were no objections from neighbours or the public. It also confirms that there were no objections from statutory consultees which included the Councils Environmental Health Manager, Contaminated Land Team, Transportation Manager, and Scottish Water.



Site plan submitted with application – NTS



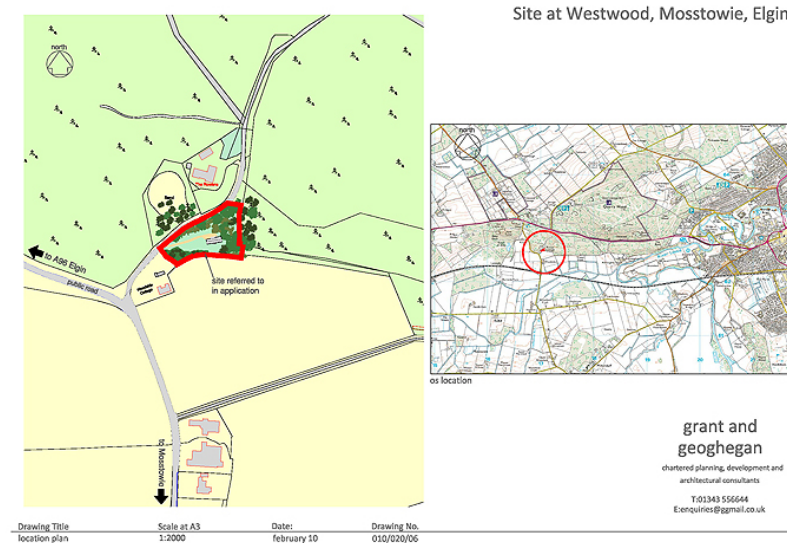
Elevations submitted with application - NTS

4.0 The Proposal

4.1 The proposal is for a single dwelling served by a public water supply and private drainage (septic tank/soakaway and SUDS). Access will be from a minor public road running along the North boundary of the site which also serves two existing houses immediately North and West of the site.

4.2 The design of the proposed house is 1.5 storey with a very traditional appearance and character. The appearance and character of the house will be complimented and enhanced by the proposed traditional finishes of natural slate on the roof and lime render on the walls. The scale and design of the house have been specifically tailored to the site features to ensure that it integrates with both the site and wider area. 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 plans for the site also incorporate the retention of a large number of existing mature and semi-mature trees which, along with the topography, will envelop the house and wrap it into the landscape.



Location Plan submitted with application - NTS

5.0 The Site

5.1 The site is located within a small cluster of existing properties approximately 2.0 miles West of Elgin. This cluster of properties includes two houses immediately North and West of the site with a large new house (approved December 2006 – Appendix 8) a short distance to the South beside a children’s nursery (converted steading) with another house immediately South of the nursery. Therefore in the immediate vicinity of the site there are four houses and a substantial building used as a children’s nursery.

5.2 The site itself is an exceptionally well defined, enclosed and naturally screened area of ground extending to approximately 3100 sqm (0.31ha or 0.76ac). It is bounded to the North by a tree covered slope rising up to an existing minor road with woodland beyond, to the West by trees within the site and an existing house, to the East by trees within the site with a woodland beyond and to the South by more trees within the site with fields beyond. The scale of the plot reflects the proportion given over to trees and the topography of the site reflecting the historical approach to the traditional setting of rural houses.

5.3 The position of the house within the plot has been carefully chosen to minimise any impact on neighbouring properties, preserve privacy and reflect the established settlement pattern of the existing grouping of buildings in the vicinity.

- 5.4 The applicant has owned the site for a number of years and has planted a large number of indigenous broadleaved trees as well as retaining and managing existing trees and planting. The location for the house within the plot has been specifically and very carefully chosen. It will be positioned on a flat area of ground on the lower part of the site to maximise the enclosure and containment provided by the existing topography and planting and to ensure that there is the minimum of disturbance to existing trees/shrubs within the site which the applicant has carefully managed. In time the growth of the already well established semi-mature trees, which the applicant has added to the existing mature trees, will further enhance the integration of the house with the site and surroundings.
- 5.5 The site can only be approached from the North and South along a minor road which leads from the A96 in the vicinity of Ardgilzean North of the site to Whitefield to the South, crossing over the Elgin/Inverness railway South of the site. Approaching from the North the site cannot be seen because of a substantial area of woodland and the existing topography, with the location proposed for the house being at the foot of a rising and wooded slope. Approaching from the South there are only limited and intermittent views of the site due to the variation in levels along the road especially in the vicinity of the railway bridge where the site disappears from view at times due to the levels approaching the bridge. Available views are always in the context of the existing houses and nursery in the immediate vicinity, the trees within the site and rising wooded ground to the North with further woodland to the East.

- 5.4 Previous outline and detailed applications for a house on the site were refused under previous Local Plan policies, including policies for housing in the countryside. This does not, in itself, preclude approval of the present proposal in relation to current Development Plan policies and material considerations.

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 (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
- 6.4 The circular describes how planning applications should be determined when balancing the Development Plan and material considerations. It sets out the following approach;
- Identify the provisions of the development plan which are relevant to the decision,
 - Interpret them carefully, looking at the aims and objectives of the plan as well

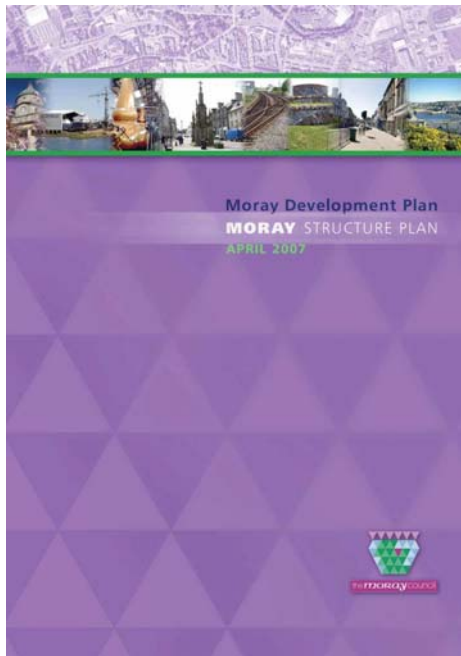
detailed wording of policies,

- Consider whether or not the proposal accords with the Development Plan,
- Identify and consider relevant material considerations for and against the proposal, and
- Assess whether these considerations warrant a departure from the Development Plan.

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

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

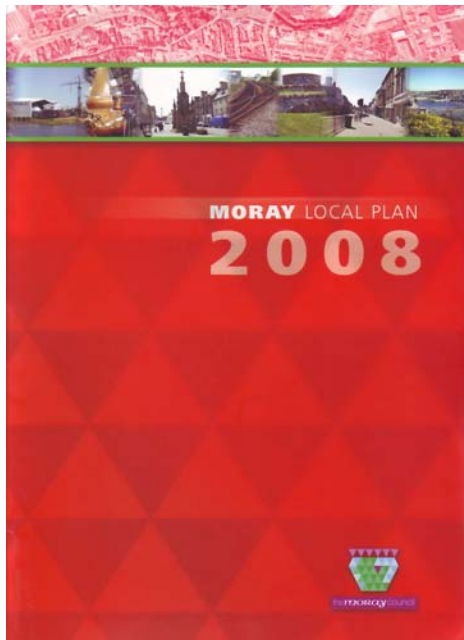
6.5 The provisions of the circular are very important in the context of this application as it is considered that there are strong and valid material considerations to justify approval of the proposal in relation to the single policy issue which led to refusal, the Countryside Around Towns (CAT) policy, especially when the proposal is considered in relation to the aims and objectives of the CAT policy in the context of the site and the relationship of the proposal to its surroundings.



Moray Structure Plan 2007

7.0 Moray Structure Plan 2007 (Appendix 4)

- 7.1 The development strategy in the Structure Plan promotes growth and its strategic aims (p8) include a commitment to maintain and grow the population and to allow sensitive small scale development in rural areas.
- 7.2 Whilst the Structure Plan directs the majority of new growth to the established settlement hierarchy it also recognises that in rural Moray the development of small scale housing is essential to sustain communities (p17)
- 7.3 The Structure Plan has an explicit presumption in favour of housebuilding in rural areas on well located and designed sites that have a low environmental impact (p17). It also recognises that new development should be sensitive to areas of scenic, special scientific and nature conservation value (p17).
- 7.4 Policy 1 (Development and Community) part (e) of the Structure Plan (p24) encourages low impact and well designed development in the countryside.
- 7.5 However Policy 2 (e) seeks to protect the countryside around Elgin from development (p31) through the Countryside Around Towns (CAT) policy. The Structure Plan makes it clear (p27) that the objective of the CAT policy is to limit development sprawl.



Moray Local Plan 2008

8.0 Moray Local Plan 2008 (Appendix 5)

- 8.1 The Local Plan reflects the Structure Plan strategy and allows for housing in the countryside subject to certain criteria being met.
- 8.2 The site is located in the countryside. Apart from being on the very Western fringe of the Elgin CAT it is not within any of the other designated sensitive areas defined in the Local Plan e.g. National Scenic Areas, Coastal Protection Zones and Gardens and Designed Landscapes. It is also not within any designated sensitive habitat areas defined in the Local Plan e.g. Sites of Interest to Natural Science, Sites of Special Scientific Interest, RAMSAR sites, SWT Wildlife Sites, National Nature Reserves and Special Areas of Conservation.
- 8.3 As a proposal for a house on a greenfield site in the countryside the lead policy to consider in terms of siting and design is Policy H8 – New Housing In The Open Countryside.
- 8.4 Policy H8 sets out requirements on the siting and design of new houses in the countryside. It presumes against applications for more than two houses and allows for two or less houses on sites which;
- do not detract from the character and setting of existing buildings, or their surrounding area, when added to an existing grouping or linear extension,
 - are not overtly prominent (such as on a skyline, on artificially elevated ground, or in open settings such as the central areas of fields). Where an otherwise prominent site is offset by natural backdrops, these will be acceptable in terms

of this criterion,

- have at least 50% of the site boundaries as long established features capable of distinguishing the site from the surrounding land (for example dykes, hedgerows, watercourses, woodlands, tracks and roadways).

8.5 As regards design policy H8 also requires;

- a roof pitch of between 40-55 degrees.
- Gable width of no more than 2.5 times the height of the wall from ground to eaves level.
- Uniform external finishes including slate or slate effect roof tiles
- Vertical emphasis and uniformity to windows
- Additional planting within the plot
- Boundaries sympathetic to the area.

8.7 The siting and design criteria in Policy H8 are supplemented by the general criteria based Policy IMP1 – Development Requirements. This policy has a range of requirements applicable to all new development including that;

- scale, density and character must be appropriate to the surrounding area,
- development must be integrated into the surrounding landscape,

8.8 In addition to the siting and design requirements of Policies H8 and IMP1 there are a range of other Local Plan policies relating to infrastructure, servicing, and tree requirements as follows;

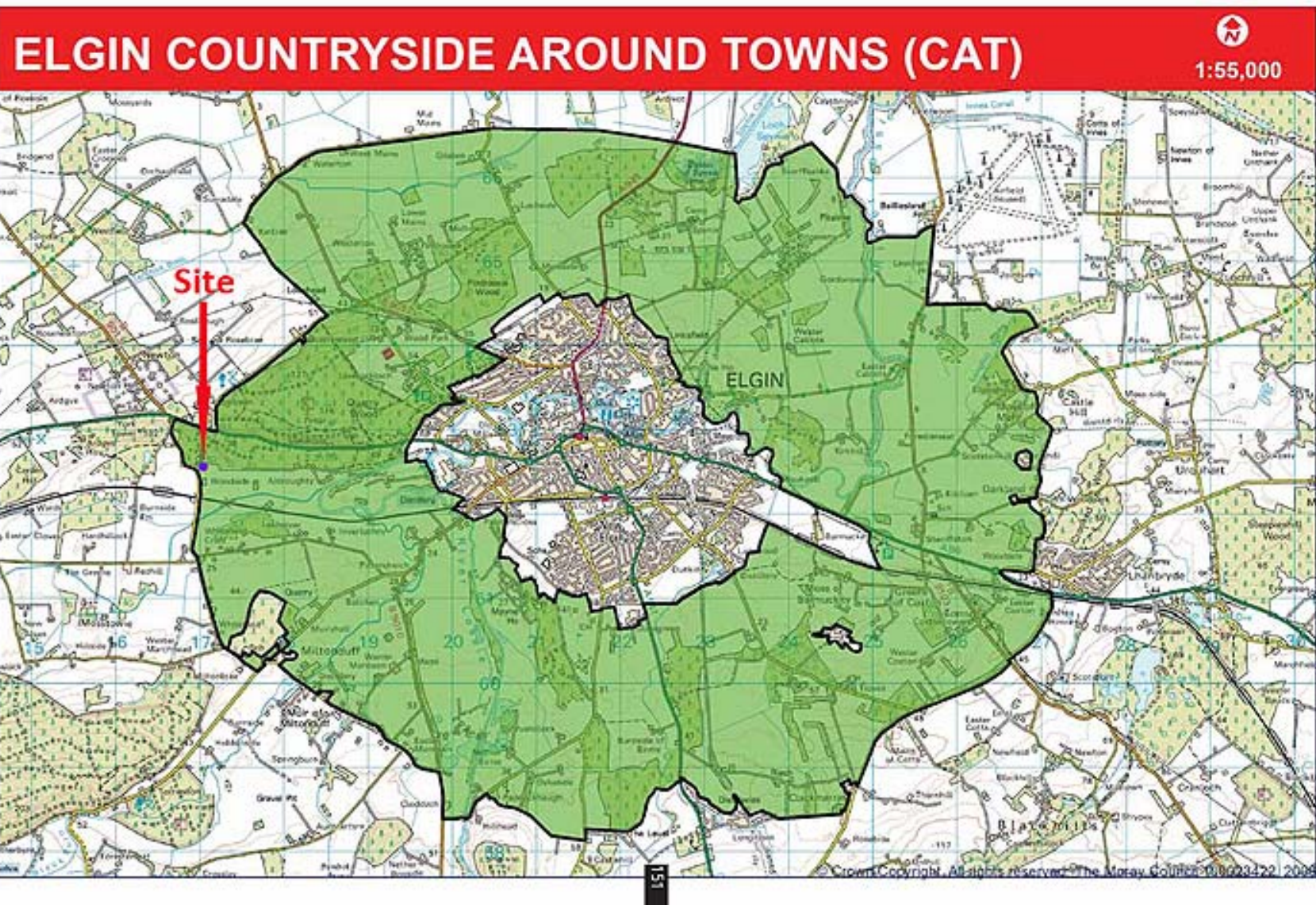
- Policy T2 – Provision of Road Access

- Policy T5 – Parking Standards
- Policy EP5 – Surface Water Drainage: Sustainable Urban Drainage Systems (SUDS)
- Policy EP10 – Foul Drainage
- Policy IMP1 – Development Requirements

8.9 In general terms these policies seek to ensure that new development is provided with a suitable and safe access, adequate car parking and adequate foul drainage (private systems are accepted for small developments in the countryside).

8.10 The site is on the very Western fringe of the Elgin CAT. Policy E10 (Countryside Around Towns) applies. It restricts development within the CAT to the rehabilitation, conversion, limited extension, replacement or change of use of existing buildings along with development required for agriculture, forestry, low intensity recreational use or development specifically allowed for in the CAT under the terms of other Local Plan policies.

8.11 The justification for the CAT policy given in the Local Plan is to prevent the sprawl of Moray's five main towns into the countryside. The justification for the restriction of development in the CAT is to protect the special character of the CAT's and preserve the distinction between the CAT's and built up areas. The position of the site on the fringe of the CAT is shown on the Local Plan extract on the following page.



Extract from Moray Local Plan 2008 showing location of site on Western fringe of Elgin CAT



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 section of the SPP on Rural Development supports small scale housing in "all rural areas" (para 94), including new clusters and groups, extensions to existing groups and plots on which to build individually designed houses.

9.5 Planning Advice Note 72 (PAN72) – Housing in the Countryside (2005) (Appendix 7)

9.6 PAN72 starts by recognising changing circumstances and points out that one of the most significant changes in rural areas has been a rise in the number of people wishing to live in accessible parts of the countryside while continuing to work in towns and cities within commuting distance. It contains guidance in some detail on how to achieve a successful development in the countryside. The PAN acknowledges that there will continue to be a demand for single houses, often individually designed, but these have to be planned, with location carefully selected and design appropriate to locality (Page 7).

9.7 The PAN gives advice on location within the landscape and specifically states that



Planning Advice Note 72 - Housing in the Countryside

housing related to existing groups will usually be preferable to new isolated development (page 7). It requires new housing in small groups to avoid a suburban appearance , by being sympathetic in terms of orientation, topography, scale, proportion and materials to other buildings in the locality.

- 9.8 Setting a building against a backdrop of trees is identified in the PAN as one of the most successful means by which new development can blend with the landscape. However it also states that the purpose of new planting is not to screen or hide new development, but to help integration with the surrounding landscape (Page 11).
- 9.9 The PAN also cautions against skyline development and heavily engineered platforms (P11).

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 single policy issue which has led to the refusal of the application is the principle of the proposal in the CAT around Elgin. This is principal, and indeed only, policy issue to be considered.

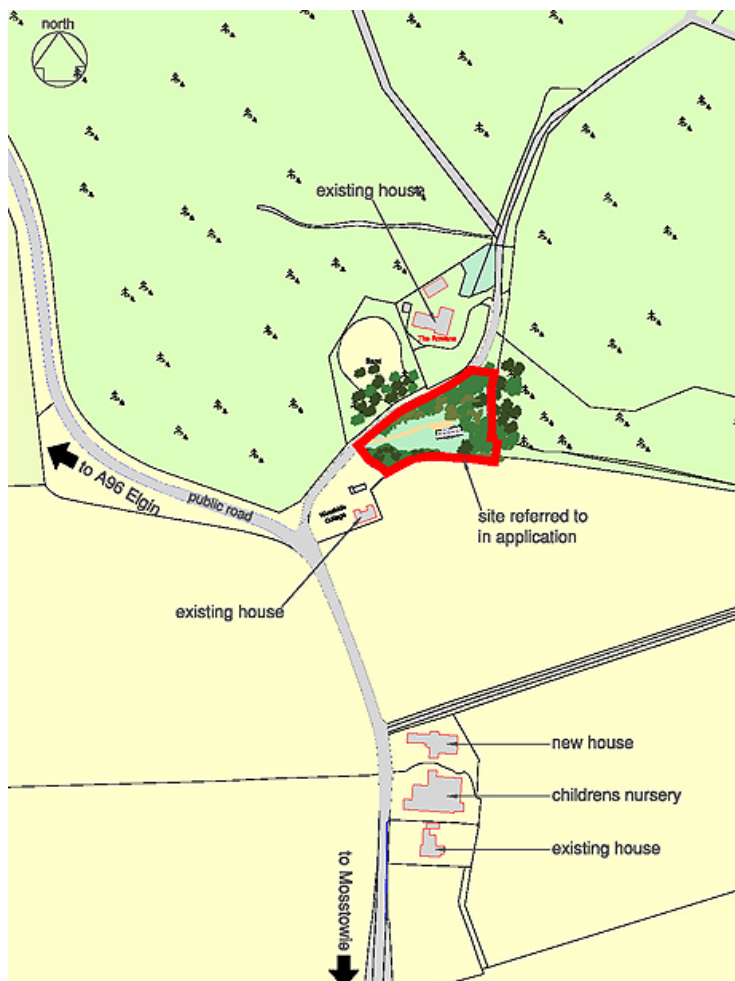
10.2 Principle of the Development – Siting and Design

10.3 There is a clear commitment in National Planning Policy and Guidance and the Moray Structure Plan Strategy to the principle of well sited and designed new housing in the countryside.

10.4 The Moray Local Plan 2008 recognises this and allows for new housing subject to siting and design criteria being met.

10.5 The acceptability of the site itself requires to be tested primarily against Local Plan Policy H8 – New Housing in the Countryside. This is the lead policy for housing in the countryside. Policy H8 starts off by saying that it assumes against multiple house applications (more than 2) on the basis that these are more appropriately directed to Rural Communities (policy H6) and the replacement of Existing Buildings (policy H7). The application is for a single house and as such is in accordance with the general thrust of the policy in terms of the number of houses being applied for. H8 sets out three main criteria to be met for siting a house in the countryside.

10.6 Firstly the house must not detract from the character and setting of existing



Plan showing position of plot within existing grouping of buildings comprising four houses (one newly built) and a children's nursery. The public road to West of site shown on the plan is the Western boundary of the Elgin CAT.

buildings, or their surrounding area, when added to an existing grouping or linear extension. The site is within a small group of four existing houses and a children's nursery. It is extremely well defined, enclosed and screened from view as part of this group which includes a recently approved substantial new house beside the nursery. The design has been deliberately developed to ensure that the proposed house will integrate very well with the predominantly traditional appearance of the existing properties.

- 10.7 The second of the siting criteria within Policy H8 is that the dwelling must not be overtly prominent. Examples of overtly prominent locations given within the policy are sites on a skyline, on artificially elevated ground, or in open settings such as the central areas of fields. Where an otherwise prominent site is offset by natural backdrops the policy states that these will be acceptable in terms of this criterion. The site cannot be said to represent any of the forms of "overtly prominent" location precluded by the policy. It is not on the skyline, it does not occupy artificially elevated ground and it is not in an open setting such as the central area of a field.
- 10.8 The second leg of policy H8 also allows for prominent sites provided they are offset by natural backdrops. Even if it could be described as prominent, which it is not, it would none the less comply with this leg of the policy because it has such a strong natural backdrop.
- 10.9 The third and final part of the siting criteria under Policy H8 is that the site should have at least 50% of its boundaries as long established features capable of distinguishing it from the surrounding land. Examples of acceptable boundaries

described in the policy are woodlands, dykes, hedgerows, watercourses, tracks and roadways. The site significantly exceeds this requirement of the policy as it is extremely well defined on all four boundaries especially the boundaries to the North, West and East.

10.10 There are a series of specific design requirements within policy H8. They are all met and exceeded by the proposals and in any event the design of the house has not been highlighted in the reasons for refusal.

10.11 It is considered that the proposal exceeds the requirements of Policy H8. In doing so it also satisfies the requirements of Policy IMP1 which requires development to be integrated into the landscape and of a scale, density and character appropriate to the surrounding area. Once again policy IMP1 is not mentioned in the reasons for refusal.

10.12 Very significantly the case officers Report of Handling confirms that the housing in the countryside policy in the current local plan is not an issue thereby recognising and accepting that the proposal integrates with its setting and the wider landscape.

10.13 Principle of Development – CAT Policy

10.14 The CAT policy is the sole reason for refusal of the application. It is accepted that the proposal is not one of the specific exceptions allowed for in the wording of the CAT policy. However this does not preclude it from being accepted if there are “material considerations” to justify a departure from policy. It is necessary to look at the aims and objectives of the CAT policy as well as the wording of the policy itself.

The CAT policy is intended to limit development sprawl into the countryside to protect the setting of Moray's five main towns, including Elgin.

- 10.15 Significantly, and perhaps uniquely, this proposal has been accepted as complying with the policies for housing in the countryside even though it is within the CAT. As such the impact of the proposal on the CAT needs to be seen on the basis of a new house which is considered to integrate successfully with its site, setting and the surrounding countryside. As noted in para 6.3 above the impact, design and relationship of a proposal to its surroundings are all material considerations to be taken into account when assessing the proposal in relation to policy.
- 10.16 The site is located at the very Western fringe of the Elgin CAT, the largest and most expansive of all the CAT's. The site is approximately two miles from the West side of Elgin. Elgin cannot be seen from the site and the site cannot be seen from Elgin. There is no visual relationship whatsoever between the site and Elgin and no evidence of any sprawl from Elgin into the countryside in the vicinity of the site. Given that the site has already been accepted, under policy, as integrated with its countryside setting, it is hard if not contradictory, to see how the proposal could be regarded as contributing to any development sprawl into the countryside which would be detrimental to either the CAT or the setting of Elgin.
- 10.17 The site is also part of an existing established cluster of development within the CAT. Such clusters are not unique within the CAT and do not compromise its purpose in terms of preventing development sprawl or protecting the setting of Elgin. The site integrates extremely well with the layout and setting of the surrounding properties

and the proposal will not compromise the appearance, character or setting of this existing grouping in terms of Local Plan policy for housing in the countryside. This is confirmed by the case officer in his report of handling when he states that there is no issue with the proposal under current Local Plan policy for housing in the countryside.

10.18 The Council has also accepted that the existing group of properties within which the site is located is an acceptable location for new development in the Elgin CAT. An application (appendix 8) for a substantial new house beside the children's nursery to the South of the site was recommended for refusal on grounds related to the CAT policy in the previous Moray Local Plan 2000. The CAT policy then was much the same as it is in the current Local Plan. However at a hearing the application was approved as an acceptable departure from the CAT policy in this location.

10.19 The application referred to above was recommended for refusal (appendix 8) on grounds that it did not involve any of the exceptions allowed for by the CAT policy, the proposal would not integrate sensitively with its surroundings so as to be unobtrusive, it would change the character of the existing grouping, encourage further development and there was not sufficient tree/shrub cover. The application was considered at a hearing of the Councils then Environmental Services Committee and approved as an acceptable departure from policy (appendix 8). This was on the basis, amongst other things, that the proposal would integrate sensitively with the surrounding landscape and was not inconsistent with what already existed in the area and had the converted steading (children's nursery) as a backdrop. It is reasonable to say that the new house approved, and built, beside the nursery is

significantly larger than the house under review and the site does not have the very significant level of definition, containment and enclosure provided for by the site under review.

- 10.20 When taking on board the aims and objectives of the CAT policy in relation to the specific characteristics of the proposal on the site concerned in the context of the existing grouping of properties nearby, including the approval of a large new house as an acceptable departure from the CAT policy, it is considered that there are good and sound material considerations to justify the proposal in relation to the specific wording of the CAT policy.

11.0 Reasons for Refusal

- 11.1 The reasons for refusal in the decision notice dated 23rd September 2010 start off by saying that the proposal is in “an attractive undeveloped location”. It is not denied that the location is attractive. However there is nothing to suggest that the proposal would in any way diminish the attractiveness of the location. Indeed the case officers Report of Handling confirms that the proposal is acceptable in relation to the Councils policies for housing in the countryside. As a proposal acceptable under the housing in the countryside policies it is difficult to see how there can be any suggestion that it would have any adverse impact on the attractiveness of this countryside location. It is incorrect to say that the site is in an undeveloped location. As described above there are four houses, one substantial and newly built, together with a large children’s nursery in the immediate vicinity of the site.
- 11.2 The refusal goes on to state that the proposal would “erode the distinction between the built-up area (of Elgin) and the countryside which the Countryside Around Towns (CAT) policy seeks to protect”. It has already been shown that this is not the case in the context of the site, it’s location, setting and integration with surrounding properties. It has also been shown that the proposal has been accepted by the case officer as complying with the Councils policies for housing in the countryside. As such it cannot be considered to compromise its countryside location and setting. On this basis it cannot be said to compromise the distinction between the built-up area of Elgin and the countryside within the CAT designation.
- 11.3 It is accepted that the proposal does not involve one of the specific exceptions referred

to in the wording of the CAT policy and referred to in the reasons for refusal. That does not, in itself, preclude approval on the basis of material considerations to justify a departure from policy. It is considered that there are good and sound material considerations to support approval of the proposal.

- 11.4 Finally the refusal notice states that “further such proposals would be encouraged”. This is not a basis to reject the proposal. The planning authority has the power to determine applications on their merits in accordance with Development Plan policies and material considerations. It is considered that there is a good and sound basis to accept the proposal in relation to Development Plan policy on the basis of material considerations as described above. By definition approval of the proposal on this basis cannot encourage proposals which are unacceptable.

12.0 Conclusion

- 12.1 The application under review is for a modest single dwelling with a very traditional design and finish on an extremely well defined, contained and screened site within an existing group of properties, four houses and a children's nursery, on the very Western fringe of the Elgin CAT designation. Within the grouping there is a newly built substantial house beside the nursery which was approved as an acceptable departure from the CAT policy.
- 12.2 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are "material considerations" to justify doing otherwise.
- 12.3 National Planning Policy and Moray Councils Structure and Local Plan policies all encourage well sited houses in the countryside.
- 12.4 The lead policy in the Local Plan for testing the acceptability of the site as a suitable location for a house in the countryside, and the proposed design, is Policy H8 – New Housing In The Open Countryside. This policy contains specific criteria about the siting and design of new dwellings and it has been shown that the proposal meets the criteria set out in the policy. This is also accepted in the case officers Report of Handling.
- 12.5 The single Development Plan policy issue is the relationship of the proposal to the CAT policy which only allows for certain forms of development in the CAT. The proposed house is not one of the exceptions provided for. The aim of the CAT policy is to prevent

development sprawl into the countryside, in this case from Elgin.

- 12.6 As part of the process of determining the review it is necessary to take account of material considerations in relation to policy to see if they provide a basis for accepting the proposal. The impact, design and relationship of a proposal to its surroundings are all material considerations and when assessing them in relation to policy it is necessary to take account of the aims and objectives of policy as well as the detailed wording.
- 12.7 This siting and design of the proposal have been accepted in relation to the Councils policies for housing in the countryside which are not part of the reasons for refusal. Therefore we have a proposal which is considered to integrate successfully with its countryside location but still at the same time compromise the CAT policy for the protection of the countryside around Elgin. However it has been shown that this is not the case when taking account of the design and layout of the proposal, location of the site in relation to Elgin and the setting of the site within an existing and established grouping of buildings. This is further emphasised by the recent approval of a substantial new house beside the children's nursery to the South of the site on the basis that it was an acceptable departure from the CAT policy on what is a more open, less defined and enclosed site than that under review.
- 12.8 It is considered that in this case there are good, sound and justifiable reasons for accepting the proposal in relation to the CAT policy on the basis of the material considerations which have been set out.

Photograph 1

View of site from South West near new house and nursery showing containment and enclosure provided by existing trees/planting and topography.



Photograph 2

View from South of site in vicinity of Whitefield Croft. Visually site will sit behind existing houses and nursery at Woodside. Strength of backdrop and enclosure evident.



Photograph 3

View approaching from South to North of Viewhill. Road levels, including rise over railway bridge together with houses/nursery at Woodside, will screen house from South from various points along approach from South.



Photograph 4

View on approach to railway bridge where levels and rise over bridge act as effective screen.



Photograph 5

View from just over rise on bridge over railway line. Even from this elevated position existing buildings and backdrop provide effective visual enclosure.



Photograph 6

View showing proposed house on site as it is at present. Containment and enclosure evident with scale of house tailored to site and nearby traditional property.



Photograph 7

View showing house on site with impact of growth of planting evident. Growth at this level effective in approximately 5 years from now.

