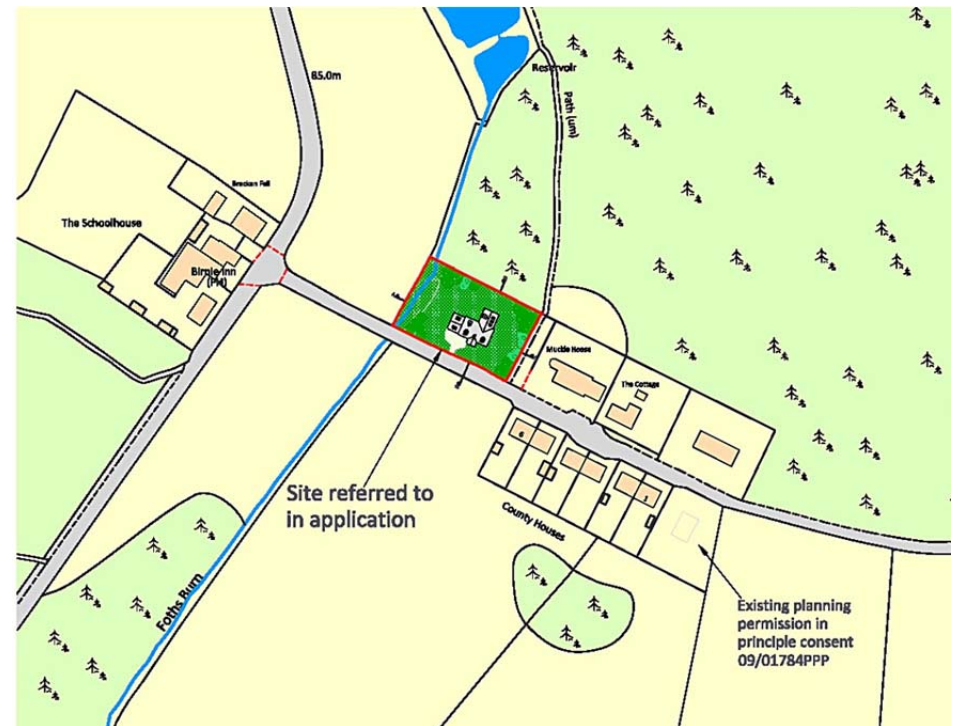


Site Adjacent to Muckle Hoose Birnie – Rothes Forest Estate

May 2011

Grounds for Review of Refusal of Planning Permission

Planning Application Ref No 10/00923/APP



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**1.0 Introduction**

- 1.1 These grounds for review of a decision to refuse planning permission for a house at The Muckle Hoose, Birnie are submitted under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended). This notice of review has been lodged within the prescribed three month period from the refusal of permission dated 16<sup>th</sup> February 2011.
- 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 single house incorporating traditional features and finishes. The site is part of a group of nine houses at County Cottages, Birnie (seven long established and two recently approved and built) with consent for a tenth house at the East end of the group. The proposed house has been sited and designed to relate to the appearance and character of this grouping as required by Moray Council Local Plan policies. The site is extremely well defined, enclosed and screened by established trees/shrubs around its boundaries and has a backdrop of woodland to the North and the existing houses at County Cottages to the East.
- 2.2 The Moray Structure Plan (Policy 1e) encourages low impact well designed development in the countryside. Local Plan policy H8 (the lead policy for assessing new houses in the Countryside) allows for single new houses provided they are on sites with a specific level of boundary definition, are not overtly prominent and, when added to an existing grouping, do not detract from the appearance and character of existing buildings or their surrounding area.
- 2.3 The site has the required boundary definition, it is not one of the examples of an overtly prominent site referred to in the policy and is extremely well assimilated into the existing grouping, and screened from view, by both the adjacent existing houses, adjacent woodland and existing tree/shrub planting around the site boundaries. This is in stark contrast to a recently approved site at the East end of County Cottages which does not have a comparable level of definition, enclosure and screening.
- 2.4 National planning policy and guidance promotes proposals such as this which make use

of sites integrated with existing clusters of buildings and which have trees as a backdrop.

- 2.5 The reasons for refusal do not cite any departure from Structure Plan Policy 1(e) showing that the proposal complies with this policy which encourages low impact and well designed houses in the countryside. Although Local Plan policy must reflect and comply with the Structure Plan the single reason for refusal states that the proposal does not comply with Local Plan policy for housing in the countryside. It is difficult to see how the proposal does not comply with Local Plan policy if it complies with the related Structure Plan policy.
- 2.6 The thrust of the reason for refusal is that the proposal would lead to the amalgamation of the group of houses at County Cottages and the group of properties at the Birnie Inn to the West. These groups are well separated from each other by the Foths Burn, fields, roads and a road junction.
- 2.7 The site does not impact on the features which separate the two groups of properties. It is tied to the group of houses at County Cottages. The proposed house will be well screened and contained by strongly defined and enclosed boundaries. The design is related to the appearance and character of the dwellings at County Cottages. Taking these features together the proposal will not result in the amalgamation of the groups of properties at County Cottages and the Birnie Inn as suggested in the reason for refusal.
- 2.8 The Planning Act requires planning applications to be dealt with in accordance with

policy unless there are material considerations to justify doing otherwise. As this proposal complies with policy and there are no material considerations to the contrary the planning application should be approved.

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

3.1 The application (Appendix 1) was dated 5<sup>th</sup> June 2010 and was refused under the Councils Delegation scheme by the case officer on 16<sup>th</sup> February 2011.

3.2 The single reason for refusal states that;

*The development does not comply with Local Plan policies H8 and IMP1 on the basis that the site would extend linear development along the roadside toward the existing group of buildings to the north west and would act to amalgamate the two currently separate groups resulting in a build up of development in the countryside to the detriment of the character of the existing groups of houses and surrounding countryside.*

3.3 The case officers report of handling for the planning application (Appendix 2) was dated 17<sup>th</sup> January 2011.

3.4 The report confirms that there were no objections from statutory consultees which included the Councils Environmental Health Manager, Contaminated Land Team, Transportation Manager, and Scottish Water. One objection was received from occupiers of the Muckle Hoose which is a new house to the East of the site approved in October 2005.



Proposed elevations – NTS (full plans in Appendix 1)

#### 4.0 The Proposal

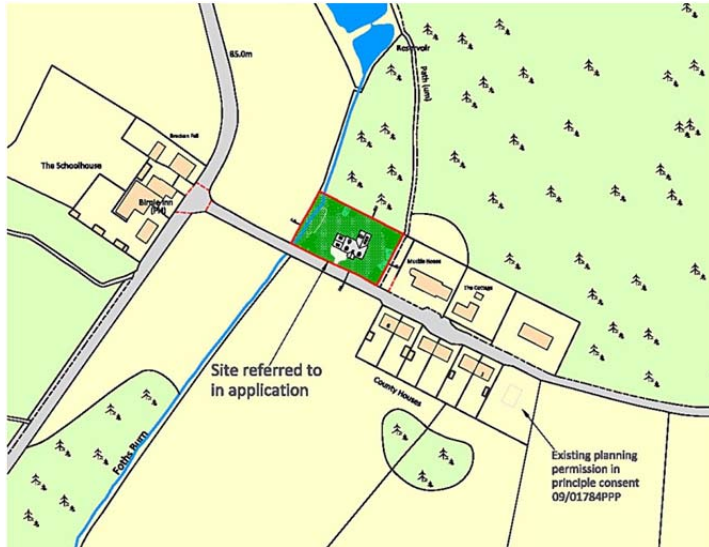
4.1 The proposal is for a single dwelling served by a public water supply and private drainage (septic tank/soakaway and SUDS). Access will be from the minor public road running along the South boundary of the site.

4.2 The design of the proposed house is 1½ storey incorporating features and finishes providing a traditional appearance. 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 Existing trees around the boundaries of the site will be retained and supplemented with new planting as required.

4.4 The proposed house is smaller in scale and set at a lower level than the new house (Muckle Hoose) to the East. This is shown on the sections submitted with the planning application (Appendix 1).





Location – NTS (full plans in Appendix 1)



Red circle – Appeal site  
 Blue circles – new houses  
 Black circle – recently approved house plot

**5.0 The Site**

5.1 The site is located within a cluster of nine existing houses at County Cottages, Birnie with planning consent granted for a tenth plot in May 2010 (ref no 09/01784/PPP). Seven of the existing houses are long established properties of a traditional appearance and character. The remaining two are substantial new properties approved in detail in October 2005 and August 2008. Planning consent has recently been granted for a new house plot at the East end of County Cottages on the South side of the road (ref 09/01784/PPP).

5.2 The site is a very well defined and enclosed area of ground extending to approximately 1584 sqm (0.15ha or 0.39ac). It is defined, surrounded and enclosed on three sides (North, West and East) by very substantial tree and shrub cover. The West boundary is also defined by the Foths Burn. The South boundary is defined by both trees/shrubs and the minor road from which access will be taken.

5.3 The site is an integral part of the existing group of 9 houses to the East at County Cottages. The substantial screening provided to the site by the existing trees/shrubs and existing properties to the East is in stark contrast to the lack of similar screening for the site recently approved at the East end of County cottages.

5.4 There is another group of properties to the West of the site comprising the Birnie Inn, two houses and a house plot granted planning permission in principle in January 2010 (ref 09/01752/PPP). This group of properties is well separated from the site by fields, public roads, a road junction and the Foths Burn.

5.5 Although there have been two previous applications for a house on this plot refused (including one dismissed at appeal) this is not, in itself, a reason to refuse a proposal which is acceptable under current Local Plan policies. Indeed the Local Review Body recently approved an application for a new house on a site at Westwood Mosstowie (ref no 10/00746/APP – LRB/Case 023) which had been refused on two previous occasions and dismissed once at appeal.

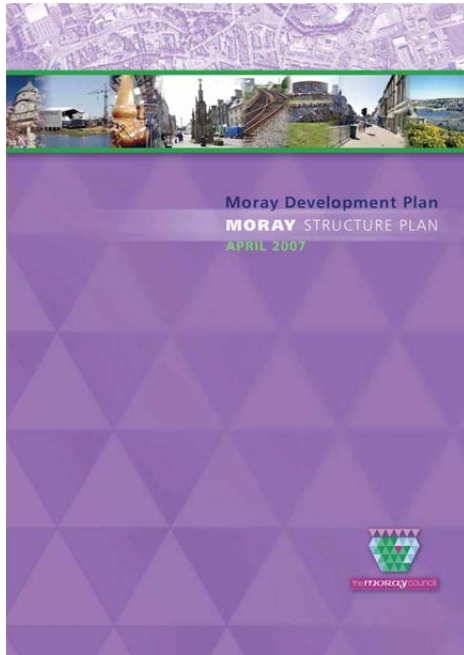
## **6.0 Development Plan Policy**

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;

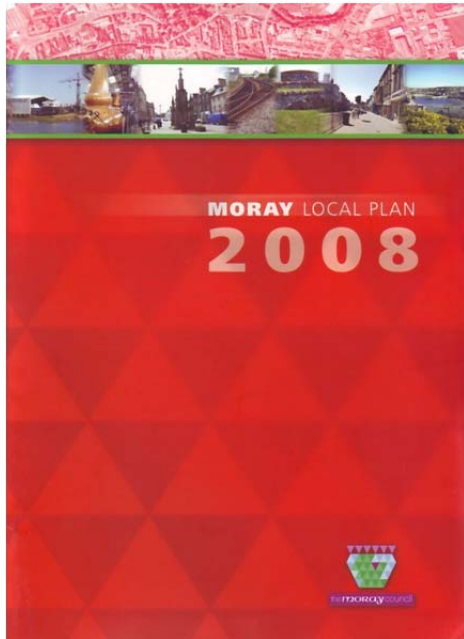
- National Scottish Planning Policy
- The environmental impact of a proposal
- The design of a development and its relationship to its surroundings
- Access, provision of infrastructure and planning history of the site
- Views of statutory consultees
- Legitimate public concern, or support, expressed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



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 Structure Plan Policy 1 (e) (Development and Community) (p24) encourages low impact and well designed development in the countryside.



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. It is not within any of the designated sensitive areas defined in the Local Plan e.g. Countryside Around Towns, National Scenic Areas, Coastal Protection Zones and Gardens and Designed Landscapes. It is also not within any designated sensitive habitat 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 new house site in the countryside the lead policy to consider 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 EP9 – Contaminated Land
- Policy EP10 – Foul Drainage
- Policy E3 – Tree Preservation Orders and Controls on Trees

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). They also seek to ensure the successful integration of new development with existing trees.



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 clusters and 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 housing related to existing groups will usually be preferable to new isolated





Planning Advice Note 72 - Housing in the Countryside

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 main issues are considered to be;

- principle of the site and design
- infrastructure and Servicing
- comments in representation from Muckle House

## **10.2 Principle of the Development**

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. There is particular support for houses related to existing groups and which make use of existing trees to provide a backdrop as is the case with the site under appeal.

10.4 Structure Plan policy 1 (e) encourages low impact well designed development in the countryside. The reasons for refusal do not identify any contravention of this policy showing that the proposal complies with it. Policies in the Local Plan must comply with policies in the Structure Plan. As the proposal meets Structure Plan policy 1 (e) it is difficult to understand how it can be held to contravene the related Local Policies.

10.5 The Moray Local Plan 2008 reflects Structure Plan policy. The lead policy for testing the acceptability of a new site in the countryside is Local Plan Policy H8 (New Housing in the Open Countryside). Following on from the Structure Plan



View of site from South West corner showing tree/shrub cover by road and backdrop of trees to North

the justification in the Local Plan for Policy H8 states that the encouragement of housing in appropriate locations in the countryside is an important objective of the plan. It goes on to explain that the Local Plan aims to allow housing in the open countryside that be easily absorbed into the landscape with new development being low impact reflecting the character of the surrounding area in terms of scale and design. The proposed site will be absorbed into the landscape by the trees which define and enclose it and the house has been designed to have a traditional 1½ storey appearance. The design of the house is not part of the reason for refusal and is therefore acceptable under Local Plan policies.

- 10.6 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.
- 10.7 Policy H8 goes on to set out three specific criteria under the heading "siting" which have to be met for the principle of a site to be acceptable.
- 10.8 Firstly the house must not detract from the character and setting of existing buildings, or their surrounding area, when added to an existing grouping or linear extension. The site is part of a group of nine existing houses (two recently built) with consent granted for a tenth. It is extremely well screened from view by the existing houses to the East, adjacent woodland to the North



View of recently approved site at East end of County Cottages. This site does not have the enclosure, backdrop or boundary definition of the site under review.

and very substantial tree and shrub cover around the site boundaries. The house has been designed to relate to the scale, form and finishes of the established and recently approved houses in the vicinity and as such will not detract from the character of the existing properties as required by this leg of the policy.

10.9 As the site is so well defined and enclosed and reflects the linear settlement pattern of the existing group of houses at County Cottages it will not detract from the setting of these properties; quite the opposite, it will complement the settlement pattern of the existing grouping which has already been added to by the approval and construction of two new houses on the North side of the road to the East of the site with approval for another plot on the South side of the road. There can be little question that the site has substantially more enclosure, screening and definition than the recently approved site on the South side of the road to the East of County Cottages.

10.10 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.



View of site from road to South showing natural enclosure and definition.

10.11 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 a strong wooded backdrop with substantial tree/shrub cover around its boundaries and the backdrop of the existing houses to the East.

10.12 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 has been carefully chosen to fit the house into a pocket of land which is strongly defined and enclosed by trees on all sides. It meets and exceeds the boundary requirements of the policy.

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

10.14 It is considered that the proposed site 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.

**10.15 Infrastructure and Servicing**

10.16 Local Plan policy requirements for infrastructure and servicing relevant to this

proposal relate to access, parking and drainage.

- 10.17 Policies T2 (Provision of Road Access) and T5 (Parking Standards) require a suitable and safe access to be provided from the public road along with car parking in accordance with the Councils parking standards.
- 10.18 The access will be from the minor public road along the South boundary of the site and plans were provided to demonstrate that the necessary visibility splay onto the public road could be achieved. The site is large enough to accommodate parking as required by the Councils Car Parking Standards. The case officers report of handling (Appendix 2) confirms that the Councils Transportation Manager has no objections to the proposal.
- 10.19 Policy EP10 (Foul Drainage) allows for private drainage systems (septic tanks/soakaways) for small scale development in the countryside with a preference for discharges to land rather than surface waters. A septic tank/soakaway system with a discharge to land is proposed.
- 10.20 The use of Sustainable Urban Drainage Systems (SUDS) is promoted by Policy EP5 (Surface Water Drainage: Sustainable Urban Drainage Systems). SUDS will be provided and the detail can be controlled through planning conditions.
- 10.21 The water supply will be from the public mains.

## **10.22 Representations**

10.23 One letter of representation was received from the occupiers of the Muckle Hoose, a new property to the East of the site. The main issues raised are about the build up of development, erosion of wild land, adequacy of site for soakaway. It is considered that the proposed house is acceptable in terms of Development Plan policies and as such would not result in an unacceptable build up of development. The site is not covered by any flora or fauna designations and the case officers Report of Handling did not identify any concerns on this issue. Finally the details of the soakaway will be determined through the building warrant application and there is nothing at this stage to suggest that compliance with the Building Regulations will not be achieved.

## **11.0 Reasons for Refusal**

- 11.1 The reasons for refusal relate to Local Plan policy only and do not cite any contravention of Structure Plan policy 1(e) which encourages low impact and well designed development in the countryside showing that the proposal complies with Structure Plan policy. As Local Plan policies must reflect and comply with Structure Plan policy it is difficult to see how the proposal contravenes Local Plan policy when it complies with the Structure Plan.
- 11.2 The single reason for refusal starts off by saying that the site would extend linear development. This is not, in itself, a reason to reject the proposal in terms of policy. The test under the policy (H8) is whether the proposal would detract from the character or setting of existing buildings, or their surrounding area, when added to an existing grouping or linear extension. It has been shown above that this is not the case with this proposal. Furthermore planning consent has already been granted for new houses at the East end of County Cottages. Although these proposals were linear development they were considered to be acceptable under policy demonstrating that “linear development” is not in itself a basis to reject the proposal in terms of Development Plan policy.
- 11.3 The central issue in the reason for refusal is that the site would lead to the amalgamation of the group of houses at County Cottages with the group of properties at the Birnie Inn to the West and that this would result in a build up of development which would be detrimental to the character of the existing groups of houses and surrounding countryside.



- 11.4 The existing group houses at County Cottages is very well separated from the group of properties at the Birnie Inn to the West. There are fields, the Foths Burn, roads and a road junction between them. The site is very clearly tied to the properties at County Cottages and does not occupy any of the open ground between these properties and those at the Birnie Inn. In addition it is very well defined and enclosed in association with the properties at County Cottages to the extent that there is more natural enclosure and definition to the site than perhaps any of the others in the vicinity.
- 11.5 The proposal will not amalgamate the group of houses at County Cottages with the group of properties at the Birnie Inn. The site does not impact on the features which separate the two groups of properties. A single house on the site under appeal, tied to the group of houses at County Cottages, contained within such strongly defined and enclosed boundaries, with a design related to the appearance and character of the dwellings at County Cottages, will not result in the amalgamation of the groups of properties at County Cottages and the Birnie Inn as suggested in the reason for refusal.

## **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 National Planning Policy and Moray Councils Structure and Local Plan policies all encourage well sited and designed houses in the countryside.
- 12.3 The lead policy in the Local Plan for testing the acceptability of the site as a suitable location for a house in the countryside is Policy H8 – New Housing In The Open Countryside. This policy contains specific criteria about the siting of new dwellings and it has been shown that the proposal meets the criteria set out in the policy. It is also the case that the proposal meets with Structure Plan Policy 1(e) which encourages low impact well designed development in the countryside. No contravention of this policy is identified in the reason for refusal.
- 12.4 It has also been shown that the proposal is acceptable in relation to other relevant Local Plan policies regarding design, provision of access, parking and drainage.
- 12.5 There were no objections to the proposals from any of the statutory consultees. Whilst there was an objection from the occupiers of the adjacent new property (Muckle Hoose) it is not considered that this raised issues warranting refusal of the proposal.
- 12.6 The reason for refusal suggests that the proposal would lead to a development that would detract from the character of this part of the countryside. However it has been

shown that the proposal complies with policy so this cannot be the case.

- 12.7 As the proposal is in accordance with the Development Plan and there are no known material considerations to the contrary it is considered that the application should be approved.

**Photograph 1**

Red circle – Appeal site  
Blue circles – new houses  
Black circle – recently approved house plot



**Photograph 2**

View of site from South West corner showing tree/shrub cover by road and backdrop of trees to North





**Photograph 3**

View of site from road to South showing natural enclosure and definition.



**Photograph 4**

New House (Muckle Hoose) to East of site, at higher level than site.



**Photograph 5**

New house at east end of County Cottages on North side of road.





**Photograph 6**

View of recently approved site at East end of County Cottages. This site does not have the enclosure, backdrop or boundary definition of the site under review

