

Grounds for Review of Refusal of Planning Permission

Planning Application Ref No 13/00188/APP



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1.0 Introduction

- 1.1 These grounds for review of a decision to refuse planning permission for a house between Moorside and Oakview, Mosstowie 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 2nd April 2013.
- 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 traditional design and finish on a well defined, contained, enclosed and screened site within an existing group of three houses and a farm building where there is also consent for another two dwellings. The site is located on the western fringe of the Elgin Countryside Around Towns (CAT) designation.
- 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. The proposed design of the house has not been identified as an issue in the reasons for refusal of the application.
- 2.5 The CAT policy allows for certain forms of development in the CAT. Although 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 It is considered that the siting and design of the proposal are acceptable in relation to Local Plan Policy H8. The aim of the CAT policy (an important material consideration) is to prevent development sprawl into the countryside. The aim of the policy is not compromised taking account of the design and layout of the proposal, characteristics of the site, location of the site in relation to Elgin and the setting of the site within an existing and established grouping of houses where consent has been granted for additional housing within the CAT. Furthermore the Council has accepted new houses, within the CAT, as additions to existing groupings of buildings at nearby Woodside to the north. This demonstrates that the siting of new houses as part of existing groupings within the CAT can be acceptable without compromising its intended purpose.
- 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 4th February 2013 and was refused under the Councils Delegation scheme by the case officer on 2nd April 2013.

3.2 The reasons for refusal state that;

The proposal is contrary to policies E10, H8 and IMP1 in the Moray Structure Plan and to policy E10 in the Moray Local Plan for the following reasons.

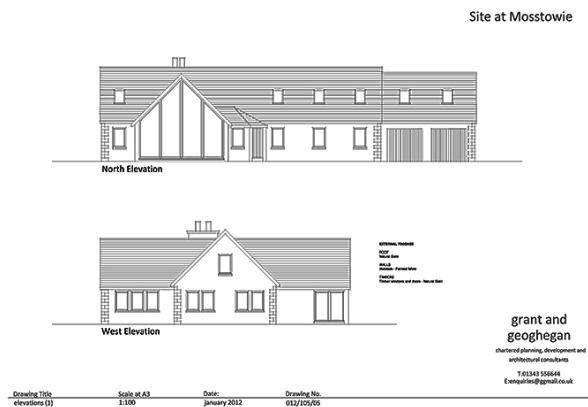
1. *The proposal would be contrary to the Countryside Around Town policy, and none of the exceptions allowed by this policy applies to the proposals.*

2. *The roadside development proposal would link separated houses to the east and west along the road and would create a linear form of development out of keeping with the character of the area, thus contributing to a build up of development. On this basis it is considered that the proposal would be in breach of policy H8 due to it being overtly prominent, and to policy IMP1 due to its detrimental impact on the open rural character of the setting.*

3. *Further such development would be encouraged.*



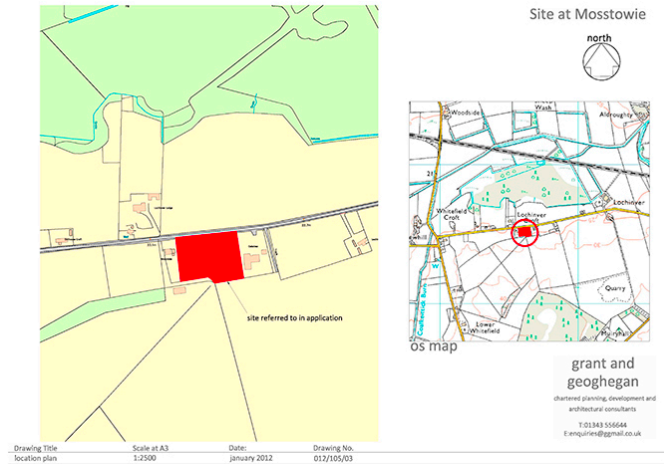
Elevations submitted with application – NTS



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.
- 4.2 The design of the proposed house is single storey in scale with a traditional appearance and character. This will be complimented and enhanced by the proposed traditional finishes of natural slate on the roof, painted wetdash on the walls and timber doors and windows. 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 existing trees which, along with the topography and the adjacent existing and approved dwellings, will help absorb the house into the landscape.



Location Plan submitted with application – NTS



Site Plan submitted with application – NTS

5.0 The Site

5.1 The site is located within a small cluster of three existing dwellings and a farm building approximately 1.6 miles west of Elgin where there is also planning permission for another two houses. This will result in an overall group of five properties. There are two houses (one a large new property) immediately east and west of the site with planning permission for a substantial new house adjacent to the south west boundary of the site where there is also an existing agricultural building. Across the road to the north there is an existing large modern house with planning permission for an additional new dwelling between this house and the road. Therefore the site is a gap between two existing houses within a group of three houses and an agricultural building where there is also consent for another two dwellings. In the context of what already exists and the additional approved dwellings the proposal is infill development.

5.2 The site itself is a well defined, enclosed and naturally screened area of ground extending to approximately 6624 sqm (0.66ha or 1.6ac). It is bounded to the north by trees/shrubs and the public road, to the east and west by trees and existing properties and to the south by trees/shrubs with fields beyond. The size of the plot is generous and fits in well with the settlement pattern of plot sizes in the surrounding area. Within the plot there are extensive areas of young trees/shrubs with more mature trees beside the eastern boundary. These features can be retained and added to, particularly along the boundary with the road, to assist with the integration of the plot

with the landscape.

- 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 immediate vicinity.
- 5.4 The site can only be approached from the east and west along a minor public road. Approaching from both directions the proposed house will be screened by existing trees/shrubs on the site. The existing large new house on the east side of the site adds to the screening effect from this direction. Views of the proposed house will only be available over a very short distance from the east and west and always in the context of the existing trees/shrubs on the site which can be retained along the boundaries and also in the context of the existing houses in the immediate vicinity. This will be added to by the two additional approved houses, one of which will be at a higher level to the south west of the site near an existing agricultural building.

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

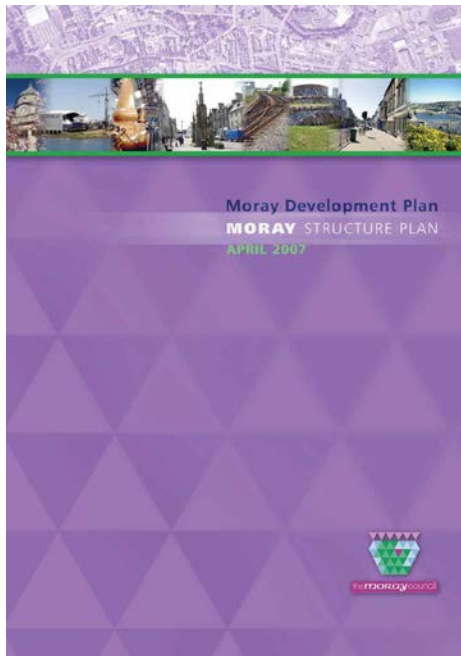
detailed wording of policies,

- 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.

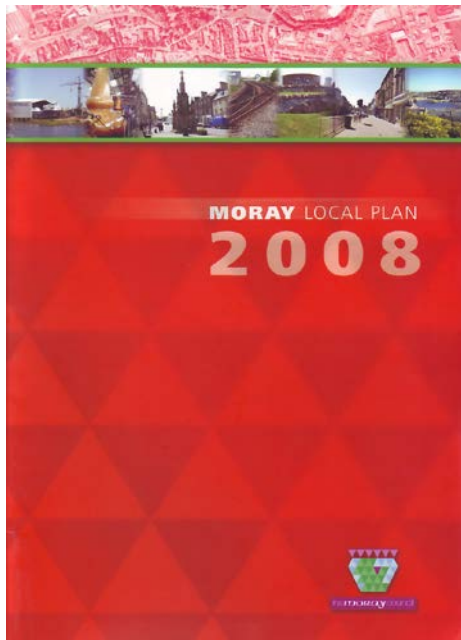
6.5 The provisions of the circular are very important in the context of this application as it is considered that there are valid material considerations to justify approval of the proposal in relation to the Countryside Around Towns (CAT) policy, especially when the proposal is considered in relation to the aims and objectives of the CAT policy in the context of the site and the relationship of the proposal to its surroundings. It is not considered that the proposal contravenes policies H8 (New Housing In The Open Countryside) or IMPI (Development Requirements) as stated in the reasons for refusal. This is explained in more detail in sections 10 and 11 of this submission.



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.

8.6 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,

8.7 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

8.8 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).

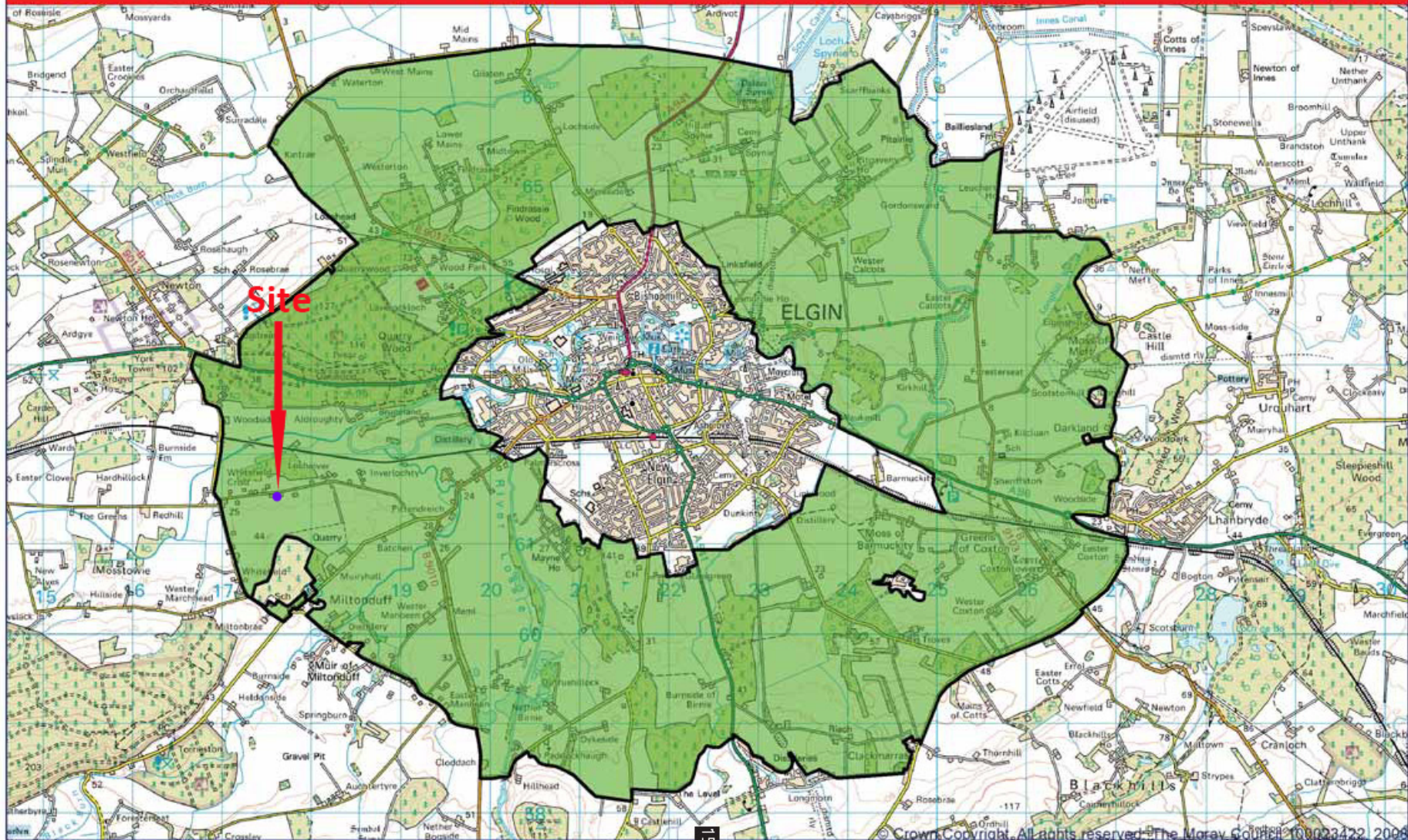
8.9 The site is on the Western fringe of the Elgin CAT. Policy E10 (Countryside Around Towns) applies. It restricts development within the CAT to the rehabilitation, conversion, limited extension, replacement or change of use of existing buildings along with development required for agriculture, forestry,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

8.10 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.

ELGIN COUNTRYSIDE AROUND TOWNS (CAT)



1:55,000



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.

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 buildings, or their surrounding area, when added to an existing grouping or linear extension. The site is within a small group of three existing houses and an agricultural building where



Aerial photo showing position of plot within existing grouping including additional approved houses – larger version in following pages

there is consent for another two dwellings including a substantial new house immediately to the south west of the site at a higher level near the agricultural building. The site is well defined, enclosed and screened from view as part of this group and it is effectively a gap/infill site within the group especially when account is taken of the additional approved houses. The design and scale of the proposed house has been deliberately developed to ensure that it will integrate very well with the scale and appearance of the existing properties. It is fair to say that the scale and design of the proposed house is perhaps more in keeping with the characteristics of traditional rural housing than that of the existing new house to the east and the longer established modern house to the north. As a gap site within the existing grouping, which will be expanded by the approvals for two additional houses, the proposed site will not detract from the appearance and character of the grouping as required by policy H8 and it will not involve the form of linear extension precluded by policy H8.

- 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. 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 there is a backdrop of trees/shrubs within the site with an agricultural building at a higher level to the south

where permission has also been granted for a substantial new dwelling on a higher level than the site.

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 exceeds this requirement of the policy as it is well defined by the public road/trees/shrubs to the north, existing houses and trees/shrubs to the east and west with trees/shrubs along the south boundary.

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 as an issue 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.

10.12 Principle of Development – CAT Policy

10.13 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.

- 10.14 The site is located at the western fringe of the Elgin CAT, the largest and most expansive of all the CAT's. The site is approximately 1.6 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 connecting with the site. It is hard to see how the proposal could be regarded as contributing to any development sprawl into the countryside connected with Elgin which would be detrimental to either the CAT or the setting of Elgin.
- 10.15 This is effectively a gap/infill site in an existing established grouping of buildings within the CAT where consent has been granted for additional new houses. Such groupings 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 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.
- 10.16 At nearby Woodside to the north where there is another grouping of existing buildings within the CAT the Council has also accepted that such a grouping can be appropriate for new development. Two new houses were approved in the CAT beside existing properties.

- 10.17 At a meeting (hearing) of the Local Review Body on 24th February 2011 a new house was approved after being refused by the planning case officer. The LRB accepted the house within the CAT on the basis of its location and relationship with adjacent properties. The site was effectively infill as is the case with the site under appeal and it was also well defined and contained similar to the site under appeal.
- 10.18 An application for a substantial new house beside a children's nursery at Woodside was also approved at a hearing of the Councils then Environmental Services Committee after being 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 relation to its location and setting along with other properties.
- 10.19 When taking on board the aims and objectives of the CAT policy in relation to the specific characteristics of the proposal on the appeal site in the context of the existing grouping of properties nearby it is considered that there are good and sound material considerations to justify the proposal in relation to the CAT policy.