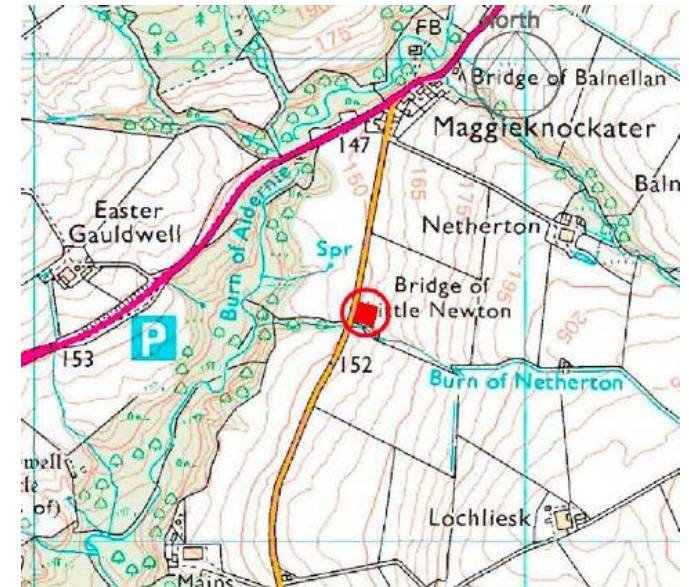


Erect House at Netherton Maggieknockater

September 2013

Grounds for Review of Refusal of Planning Permission

Planning Application Ref No 13/00753/APP



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1.0 Summary

- 1.1 These grounds for review of a decision to refuse planning permission for a house on a site at Netherton, Maggieknockater 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 24th June 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).
- 1.3 Policy H8 (New Housing In The Open Countryside) is the lead policy in the Moray Local Plan 2008 for assessing the suitability of a new house site in the countryside. Only two types of site are specifically precluded by the policy. Firstly sites which are overtly prominent and secondly those which would detract from the setting of existing buildings or their surrounding area. The proposal does not involve either.
- 1.4 Prominent sites are acceptable if they have a natural backdrop and all sites must have 50% of their boundaries as long established features capable of distinguishing the site from the surrounding land. Even if the site were to be described as prominent, which it is not, it has a very strong natural backdrop of rising land to the east up to a tree line beyond. The site has the necessary 50% boundaries comprising a public road to the west and a belt of mature trees to the south.

- 1.5 The proposed design is based on a traditional single storey form and proportions (with scope for accommodation within the roof) with traditional white painted wetdash on the walls and natural slate on the roof. There was no reference to the design in the reasons for refusal so it can be considered acceptable under policy in this location.
- 1.6 The case officers Report of Handling confirms that there were no objections from third parties or the consultees.

2.0 Background to Handling of Application

2.1 The application (Appendix 1) was dated 27th April 2013 and was refused under the Councils Delegation scheme by the case officer on 24th 2013.

2.2 The reasons for refusal states that;

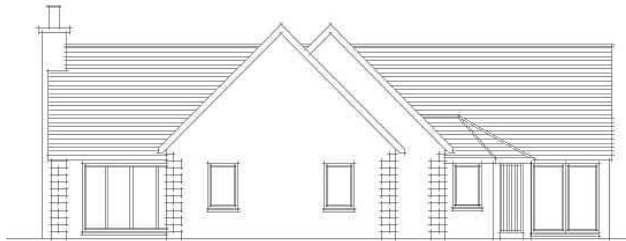
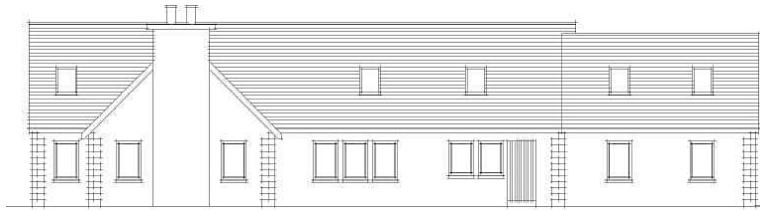
1 – The proposal would be contrary to policies H8 and IMP1 in the Moray Local Plan for the following reasons:

(i) – The proposal would not be sympathetic to the character of the surrounding area or integrate in the landscape setting. The site is in an elevated, open roadside location, would appear as sporadic development unrelated to the settlement pattern and hence would be overtly prominent.

(ii) – Further such intrusive development would be encouraged.

2.3 The case officer's Report of Handling for the planning application is attached as Appendix 2.

2.4 The report confirms that there were no objections from any third parties and the statutory consultees which included Scottish Water, the Contaminated Land Team, the Transportation Manager and the Planning Gain Unit.



elevations – NTS (full plans in Appendix 1)



site section – shows proposed house cut into slope of site to east

3.0 The Proposal

- 3.1 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 public road running along the west boundary of the site.
- 3.2 The design of the proposed house is single storey in scale incorporating features and finishes reflecting traditional forms and details including the use of natural slate on the roof and wetdash on the walls.
- 3.3 Extensive planting of native tree and shrub species is proposed around the boundaries of the site to include the requirement in Policy H8 for 25% of the plot to be planted with native species.
- 3.4 As the site slopes up to the east the proposed house will be cut into the slope by between 1.5m and 2.0m to the rear of the eastern elevation to integrate with the contours of the land and allow the house to sit into the site rather than have any unnatural looking underbuilding.



Location – NTS (full plans in Appendix 1)

4.0 The Site

- 4.1 The site is located to the south of Maggieknockater. It comprises the south western corner of a field which slopes down from the east above the site to the public road along the west boundary of the site. Viewed in context the field containing the site is part of a larger area of rising ground which slopes upwards to the Hill of Newton to the east.
- 4.2 The site is a very well defined and enclosed area of ground extending to approximately 2683sqm, 0.26ha (0.66ac). It is defined and enclosed to the west by the existing public road between Maggieknockater and Dufftown and to the south by a stand of mature trees along the line of a small burn.
- 4.3 A site to the south of the proposed plot was refused (2005/2006) under the previous Development Plan which, as the case officers Report of Handling says, had different and more onerous policies. These decisions do not constrain approval of the proposal under appeal under current Development Plan policies.

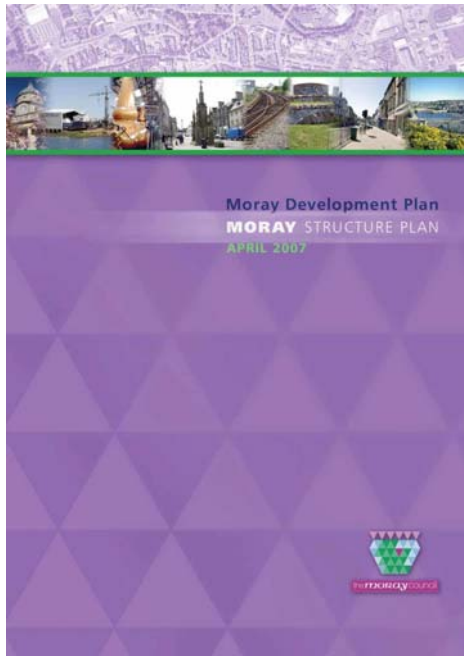
5.0 Development Plan Policy

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

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

5.3 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;

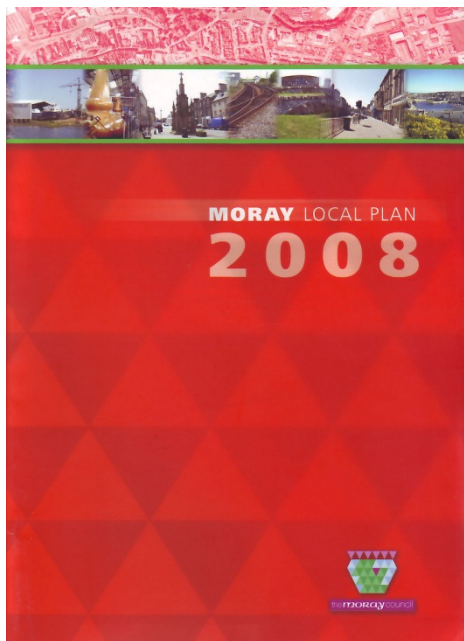
- National Scottish Planning Policy
- The environmental impact of a proposal
- The design of a development and its relationship to its surroundings
- Access, provision of infrastructure and planning history of the site
- Views of statutory consultees
- Legitimate public concern, or support, expressed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



Moray Structure Plan 2007

6.0 Moray Structure Plan 2007 (Appendix 4)

- 6.1 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.
- 6.2 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)
- 6.3 The Structure Plan has an explicit presumption in favour of house building 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).
- 6.4 Structure Plan Policy 1 (e) (Development and Community) (p24) encourages low impact and well designed development in the countryside.



Moray Local Plan 2008

7.0 Moray Local Plan 2008 (Appendix 5)

7.1 The Local Plan reflects the Structure Plan strategy and allows for housing in the countryside subject to certain criteria being met.

7.2 The site is located in the countryside. It is not within any of the designated sensitive areas identified in the Local Plan e.g. Countryside Around Towns, National Scenic Areas, Coastal Protection Zones and Areas of Great Landscape Value. It is not within any designated sensitive habitats identified in the 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.

7.3 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.

7.4 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).

7.5 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.

7.6 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,

7.7 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 EP9 – Contaminated Land
- Policy EP10 – Foul Drainage

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



Scottish Planning Policy (SPP)



Planning Advice Note 72 - Housing in the Countryside

8.0 National Planning Policy and Guidance

8.1 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).

8.2 Scottish Planning Policy -SPP - (Appendix 6)

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

8.4 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.

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

8.6 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 (P7).

8.7 As regards design the PAN points out (P15) that there is considerable scope for creative and innovative solutions whilst relating a new home to the established character of the

area.

9.0 Main Issues

9.1 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
- design
- infrastructure and servicing

9.2 Principle of the Site

9.3 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.

9.4 Structure Plan policy 1 (e) encourages low impact well designed development in the countryside.

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

9.6 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.

9.7 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. It states that new dwellings in the open

countryside will be acceptable if the criteria are met.

- 9.8 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 will not be added to an existing grouping so this element of the policy does not come into play and is not contravened by the proposal.
- 9.9 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 is not on artificially elevated ground and it is not in the centre of a field. As regards the avoidance of artificially elevated ground it should be noted that the proposal has taken careful note of the contours of the site to ensure that the house will be set into the rising levels of the plot thereby avoiding any unnecessary underbuilding.
- 9.10 The second of the siting criteria in Policy H8 also allows for “prominent” sites providing they are offset by natural backdrops. Prominent sites are not defined in the policy. Even if the proposed site were to be considered prominent, which it is not, it would none the less meet this leg of the policy. It has a very strong natural backdrop of rising land behind the site to the east rising up to the wooded Hill of Newton beyond. This is supplemented by the mature stand of trees along the south boundary of the site.
- 9.11 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 meets the boundary requirements of the policy as it has the required boundary definition to the west (public road) and south (belt of mature trees).

9.12 Design

9.13 There are a series of specific design requirements within policy H8. The design of the house has not been referred to in the reasons for refusal so it can be considered acceptable under policy in this location. The specific requirements of the policy are all met as follows,

- 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 natural slate on the roof and wet dash on the walls
- Vertical emphasis and uniformity to the windows
- Additional planting within the plot
- Boundaries sympathetic to the area, they are defined by existing established features and will be added to by landscape planting of native tree and shrub species.

9.14 It is considered that the proposed site meets 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 character appropriate to the surrounding area.

9.15 Infrastructure and Servicing

9.16 Local Plan policy requirements for infrastructure and servicing relevant to this proposal relate to access, parking and drainage.

9.17 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.

- 9.18 The access will be from the public road along the west boundary of the site. The case officer's report of handling (Appendix 2) confirms that the Councils Transportation Manager has no objections to the proposal.
- 9.19 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.
- 9.20 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.
- 9.21 The water supply will be from the public mains.

10.0 Reasons for Refusal

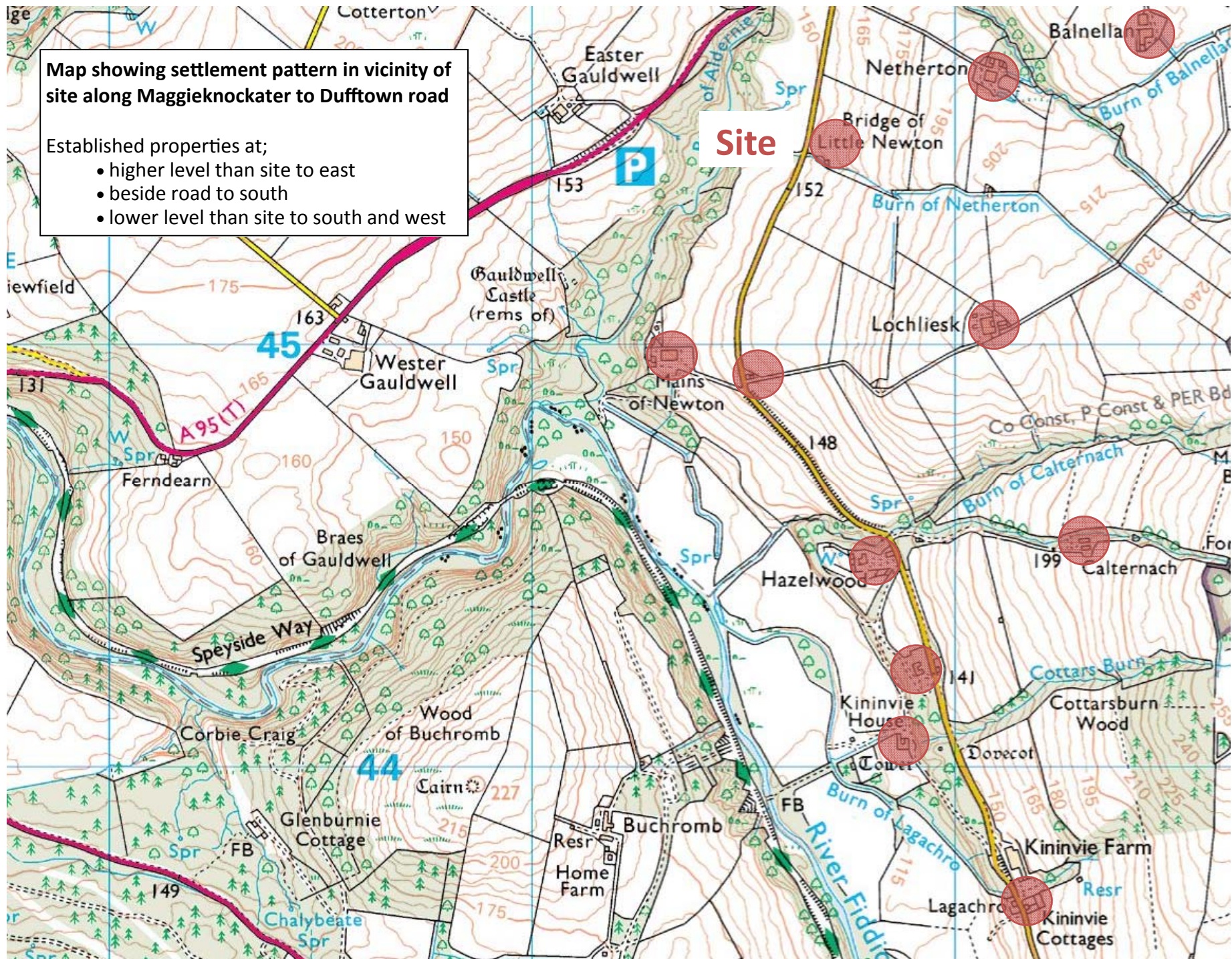
- 10.1 The reasons for refusal start off by saying that the proposal would not be sympathetic to the character of the surrounding area or integrate in the landscape setting. The site is not within a restricted landscape setting e.g. Area of Great Landscape value (AGLV), Countryside Around Towns (CAT), Coastal Protection Zone or National Scenic Area. Policy H8 allows for new housing in the open countryside. Indeed the policy is entitled “New Housing In The Open Countryside”. It has specific criteria to ensure that sites for new houses in the open countryside are acceptable. It has already been shown that the proposal meets the siting requirements of policy H8 and as such it will be sympathetic to the character of the surrounding area and landscape setting in terms of Policy H8.
- 10.2 The refusal goes on to state that the site is in an elevated and open roadside location. The site is not in the type of elevated position precluded by policy H8 as being “overtly prominent”; on the skyline or on artificially elevated ground. It sits alongside the road at a lower level than other established properties in the vicinity e.g. Balnellan and Netherton to the north east and Lochliesk and Calternach to the south. The policy does not preclude roadside locations. Indeed roadways are listed as one of the acceptable features for defining site boundaries. Neither does Policy H8 require sites to be hidden. It goes as far as saying that “prominent” sites are acceptable if they have natural backdrops. Even if the site were to be regarded as prominent it has a very strong natural backdrop of rising land to the east up to the wooded Hill of Newton which would make. In addition the site has the 50% boundaries required under Policy H8 to distinguish it from the surrounding land which includes a stand of mature trees providing a backdrop along the south boundary of the plot.

- 10.3 The reasons for refusal continue by describing the proposal as overtly prominent because it is considered to be sporadic development unrelated to the settlement pattern. It has already been shown that the site is not one of the examples of an “overtly prominent” location precluded by Policy H8. As the proposal meets the siting requirements of Policy H8 it cannot be said to be unrelated to the settlement pattern in an unacceptable manner under policy. Furthermore the settlement pattern in the area includes established properties at a higher level than the site along with properties beside the same road as the site and properties at a lower level than the site and the road.
- 10.4 Finally the reasons for refusal state that the proposal would encourage further such intrusive development. It is not accepted that the proposal is intrusive as it meets the siting requirements of Policy H8 and the proposed design is not identified as an issue in the reasons for refusal. In addition each application requires to be dealt with on its merits under Development Plan policy. Approval of this proposal will not undermine this fundamental aspect of the decision making process especially as in any event the proposal is acceptable under policy. If further applications for any unacceptable development are put forward the Council can determine the applications under policy and would not be constrained by approval of the proposal under appeal.

Map showing settlement pattern in vicinity of site along Maggie Knockater to Dufftown road

Established properties at;

- higher level than site to east
- beside road to south
- lower level than site to south and west



11.0 Conclusions

- 11.1 The Planning Act requires planning applications to be determined in accordance with the Development Plan unless there are “material considerations” to justify doing otherwise.
- 11.2 National Planning Policy and Moray Councils Structure and Local Plan policies all encourage well sited and designed houses in the countryside.
- 11.3 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 is acceptable under the criteria set out in the policy.
- 11.4 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.
- 11.5 There were no objections to the proposals from any of the statutory consultees or from any neighbouring properties or third parties.
- 11.6 It is requested that the appeal be supported and planning permission granted for the proposed house.

View to site from north showing stand of mature trees along south boundary of plot and rising land to east.

Photograph 1



Land rising up from site as viewed from road
along west boundary of plot.

Photograph 2



View of site from south. Site on far side of tree belt which screens site from south.

Photograph 3



Site (white oval) viewed from west showing the extent and significance of the backdrop of rising land with the wooded Hill of Newton beyond.

Photograph 4

