

PLANNING APPLICATION: 07/02364/FUL

In the event that a recommendation on this planning application is overturned the Committee is reminded of the advice contained on the front page of the agenda for Reports on Applications

The Proposal

- Erect two dwellinghouses and associated works, and form an amenity area for community use in Dailuaine, Carron, Aberlour.
- Amenity area will consist of seating, footpaths and indigenous planting for use by the residents of Dailuaine.
- Effect a connection to mains water supply and install non-mains foul drainage system.
- Access to the site is off a private track.

The Site

- The site is located behind an existing row of terraced houses in the rural community of Dailuaine.
- The site is the subject of a Tree Preservation Order (TPO).
- Site is approx. 6400m² in area and roughly rectangular in shape.

Policy / Objections-Representations / Consultations - See Appendix

History

- 14th December 2005 -** Environmental Services Committee (ESC) confirm service of an emergency TPO served by the Council under delegated powers on the 9th November 2005 in response to representations regarding the perceived immediate threat to trees covering the site, by the residents of Dailuaine Terrace.
- 14th March 2006 -** Environmental Services Committee confirm service of a TPO for this site following consideration of a representation from Scottish Woodlands Ltd on behalf of the owner objecting to the Order. It claimed that the Order would restrict management of the area and that the tree species were in essence short-lived scrub species.
- 06/01335/GPA -** Proposed dwellinghouse on Dailuaine Terrace, Carron. Advice was given that the application would be determined under the current development plan policies unless material considerations indicated otherwise. No plans showing layout, numbers or access was provided.

Advertisement

Advertised as a departure from the development plan.

Observations

The main determining issues are:

Impact on Dailuaine Rural Community (L/HC1, L/IMP1, Dailuaine)

This site is located within the Dailuaine Rural Community. Policy L/HC1 presumes to approve housing applications subject to character, servicing and design considerations.

The established character of Dailuaine is formed by a linear group of distillery cottages with a belt of trees to the east, which is the subject of a Tree Preservation Order. It is considered that the proposal departs from the existing character of this community with new development being located to the rear of the existing established group of cottages.

In this case a departure can be supported for the following reasons:

- The linear form of development of the two houses reflects the existing linear form of the existing cottages to the west.
- Being separate from the existing linear terrace of development, the existing visual aesthetic remains unaltered.
- The design of the new houses is sympathetic to surrounding houses.
- The rural community statement indicates that there is limited scope for gap site development within the community. In this case, the location of the proposals coincides with gaps within the existing woodland to the rear of Dailuaine Terrace. Therefore, the proposals can be accommodated without detriment to the overall character of the community. The surrounding trees and topography would mitigate the impact of the proposals, from the surrounding area. Any loss of trees would be mitigated by proposals for replacement and additional planting.
- The site is not designated as amenity land in terms of its contribution to the environmental character of the community. However, as noted above the development can be accommodated without impact on the landscape setting of the community.
- The proposal also includes provision for amenity land covering approx. 50% of the site including additional planting, footpaths and seating for community use. At present the area is fenced off preventing use by the residents of Dailuaine.

In relation to other considerations required by policy L/HC1, the proposal is acceptable in design and amenity terms because:

It is proposed to connect the dwellinghouses to the public main water supply and install a biodisc and soakaway system for each dwellinghouse. Access to the site will be taken from an existing private track to the rear of the distillery cottages. Scottish Water, SEPA and the Council's Transportation Section have not objected to the proposed development. For the avoidance of doubt, the adequacy of ground conditions for septic tanks and soakaways is now dealt with under Building Standards (Scotland) Regulations (2004) as amended, at the Building Warrant stage and any system used on the site would have to comply with current legislation.

The design and scale of the properties must relate to the surroundings and take into account the landscape setting, nearby buildings and overall plot size. A combination of these factors will determine the size and style of the property. In this instance the setting, design and plot sizes of the proposed dwellinghouses is considered to be acceptable. This is because there are dwellings of a similar size and style within the existing terrace opposite and the plots are large enough to accommodate the dwellinghouses and associated works whilst minimising the impact on the TPO.

The Rural Community statement for Dailuaine also identifies noise from nearby sources as a potential issue affecting new development. The Environmental Health Section has been consulted and has not objected to the proposed development.

The application was advertised as a departure from development plan policy L/ENV7 - Area of Great Landscape Value, L/ENV4 - Tree Preservation Orders and policies 1 & 2 of the Structure Plan but following further consideration it is no longer considered to depart from these policies. This is because the site falls outwith the AGLV designation and would not prejudice the TPO designation.

Impact of Tree Preservation Order (L/ENV4)

The site is subject to a TPO designation but this does not necessarily prevent development of the land. A site visit established that there are gaps large enough to accommodate dwellinghouses with minimal impact on the TPO designation. This was further supported by a tree survey submitted by the applicant which shows that a small number of trees would require to be felled, numbering 7 in total. Two additional trees are to be felled as part of an ongoing woodland management programme and are not related to this development. The applicant intends to mitigate against this loss by replanting the species of tree lost during construction, as identified in the tree survey report. In total 38 new trees will be planted within Plots 1 and 2, the area identified for houses, and a further 50 within the proposed community area. It is considered that the development will not prejudice the TPO designation and the mitigating measures proposed are acceptable. This position will be reinforced by a condition requiring the ongoing maintenance of the area.

There has been a significant body of objection to this application. The principal objections are the impact on the TPO designation and loss of amenity land. Other issues raised include the impact of the development on animal habitats and the suitability of ground conditions for foul drainage systems associated with housing. The impact of the housing, drainage and impact on the TPO have been discussed above.

In relation to animal habitats, the applicant has carried out an ecological survey of the site. The findings were submitted to the Council and Scottish Natural Heritage (SNH) for consideration. SNH has not objected to the proposed development and recommends an informative note be attached to any consent urging the developer to use caution when developing the site to protect animal habitats from damage and minimise disturbance of species found in and around the site.

As regards to the loss of amenity land, this site is not designated as amenity land in the current development plan. However, whilst in the emerging plan the site is proposed to form part of an amenity land designation this matter is currently before the Reporter. In any event the Council has previously agreed that the emerging plan will not be used as a material consideration (until 3rd March 2008). At the time of determination, the emerging plan provisions cannot be taken into account: the proposal must be considered in accordance with the provisions of the development plan which are in force at the time of determination. At present the amenity value

of the land is limited, the site is overgrown, there are large gaps within the trees and being fenced off precludes access. As stated above, in terms of the current plan, the development can be accommodated without detriment to the overall character of the community and will afford the opportunity to provide an amenity area, which can be accessed and enjoyed by the community.

On balance of the above the application is recommended for approval.

Author/Contact Officer: Craig Wilson
Planning Officer

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Signature (*Alan Short, Development Control Manager*)

R A STEWART
DIRECTOR OF ENVIRONMENTAL SERVICES

APPENDIX

POLICY

Moray Structure Plan 2007 and/or Moray Local Plan 2000

Policy 1: Development and Community

The policy set out below identifies the strategic community development requirements for the delivery of the structure plan strategy-

The Moray Structure Plan Strategy will be supported by:

- a) the identification within the local plan of the business and industrial land allowances set out in Schedule 1 and the provision of strategic business locations at Elgin and Forres Enterprise Park and business park opportunities at Buckie, Keith and Lossiemouth;
- b) the encouragement of tourism development opportunities;
- c) the identification within the Local Plan of the housing allowances set out within Schedule 2;
- d) the provision of affordable housing in association with new housing development where a demand is identified in the Local Housing Strategy;
- e) the encouragement of low impact, well-designed development in the countryside to support local communities and rural businesses;
- f) sustaining the vitality and viability of town centres through the support of opportunities and proposals for retail and commercial development in accordance with the sequential approach;
- g) promotion of the strategic transport links as set out in Proposal 2;
- h) the protection and enhancement and new provision of facilities for community use, healthcare, sport and recreation;
- i) the inclusion within Local Plans of a policy requiring appropriate developer contributions towards healthcare and other community facilities.

Policy 2: Environment and Resources

The Moray Structure Plan Strategy will be supported by: -

- a) protecting international, national and local nature conservation and scenic designations from inappropriate development;
- b) protecting the wider natural environment and local biodiversity from inappropriate development and promote opportunities for environmental enhancement and restoration where possible;

- c) working in partnership with the Cairngorms National Park Authority and other interested parties to implement the objectives of the National Park;
- d) restricting development within coastal areas outwith settlements to only that in which social and economic benefits outweigh environmental impact;
- e) providing protection from development to the countryside around the towns of Elgin, Buckie, Keith, Forres and Lossiemouth;
- f) conserving and enhancing the areas built heritage resources and their settings;
- g) supporting proposals aimed at regenerating the area's natural and built environment including good design;
- h) providing waste management facilities to deliver Area Waste Plan and National Waste Plan objectives and ensuring that new development is designed to facilitate waste management practices and promotes the minimisation of waste;
- i) promoting sustainable urban drainage systems (SUDS) in all new developments;
- j) promoting schemes to alleviate flooding in a sustainable and sensitive way using natural ecosystems and features where possible and also restricting development within flood risk areas following the guidance set out in the Risk Framework in SPP7: 'Planning and Flooding' and promoting flood risk management schemes to tackle flooding that threatens existing development and considering development proposals against the Flood Risk Framework set out in Table 5;
- k) safeguarding the area from pollution and contamination;
- l) promoting opportunities for the sensitive development of renewable energy and promoting renewable energy in new development;
- m) safeguarding resources for the production of minerals, preferred forestry areas, and prime agricultural land.

DAILUAINNE

Physical landscape constraints and the predominantly industrial character of the community limit the provision of gap sites. There is no public water supply or public drainage. Development will depend on the suitability of ground conditions for soakaways. Any future residential development must consider the potential for excessive noise from existing noise sources in the vicinity. Applicants should have regard to noise measurement criteria which are appropriate.

Character Description: 5 Distillery Village

Specific Character Features

- Group 'B' buildings dominant.

Policy L/IMP1: Development in Built-up Areas

In areas covered by this policy, (i.e. all land within settlement boundaries and rural communities), the Council will, in considering applications for planning permission, try to ensure that proposals for development do not harm the general character of the surrounding area. Applications will therefore take account of the main uses of land and buildings in the vicinity, the mix of such uses and the architectural quality of the area. The main concern of the Council is to ensure that development proposals should neither conflict with nor detract from the character, amenity and design of an area. This policy will not preclude appropriate new development and is not intended solely to maintain the status quo.

In interpreting and clarifying this policy, the Council will take into account the guidelines on Character, Amenity and Design.

Guidelines on Character, Amenity and Design (L/IMP1)

a. Character

The character of an area is assessed by the;

- (i) main uses;
- (ii) appropriateness of a diversity of uses; and
- (iii) desirability of introducing a development which may detrimentally alter the existing balance of usage
- (iv) architectural style of the area.

b. Amenity

The amenity of an area is assessed in terms of both the people who will occupy the development site, and the adjoining occupiers. In short, new developments should be "good neighbours". Where there is an inherent incompatibility of neighbouring developments, or where remedial action cannot be made effective, applications are likely to be refused.

The important aspects of amenity which the Council considers are worth protecting are:-

- (i) **Privacy** - for both the occupants of a proposed development and surrounding neighbours. Loss of privacy can be minimised by re-orientation, reducing the densities of development reducing the size of buildings, and attention to building levels or by design modifications, for example, window proportion and size.
- (ii) **Traffic** - the introduction of increased traffic movement and resulting noise, can significantly detract from the amenities of an area.
- (iii) **General Disturbance** - protection from activities which create unreasonable levels of noise, smells and other discomforts including wheeled bin locations.
- (iv) **Sunlight/Daylight** - adequate levels of sunlight and daylight, and to a lesser extent, outlook, should be safeguarded for surrounding properties and afforded to new developments.

c. Design

Design of new development should not only relate to the type of development in the immediate vicinity but also to the wider issues of context and setting. This need not be restrictive to new or innovative architectural expression.

Applicants should, therefore, avoid design proposals which compromise the appearance of design characteristics of the surrounding area.

In considering the appropriateness of a design the Council will have regard to:

- (i) The scale of adjoining development.
- (ii) The materials, finishes and colours used in nearby development.
- (iii) Any features on or near the site worthy of reproduction, protection or enhancement, e.g. trees, hedges, views and other features of public importance.
- (iv) Principles of site sensitive design e.g. that pitched roofs are preferred to flat roofs, piended dormers to box dormers, vertical windows to horizontal picture windows etc., where these features predominate in an area.

Policy L/ENV7: Areas of Great Landscape Value (AGLV)

Development proposals within AGLV's will only be permitted where they incorporate high standards of siting and design for rural areas and where they will not have a significant adverse effect on the landscape character of the area (see policies L/IMP2 and L/IMP3 in chapter 8). The Council will require detailed proposals covering site layout, landscaping, boundary treatment, building design and material finishes to be provided with planning applications.

The Council will seek a Direction from the Scottish Ministers to restrict the formation of vehicle tracks above the 150m level within AGLV's.

Policy L/IMP3: New Building Design

(i) Design Principles

All building development must be designed to respond adequately to the locality. Applications must meet the following requirements:-

- a) appropriate location in landscape or townscape
- b) careful placement on a site, particularly in relation to character, amenity and energy conservation
- c) appropriate size and form in relation to existing buildings, sky line and landform
- d) appropriate density, layout and orientation in relation to character, amenity, privacy of neighbouring properties and energy conservation

- e) sensitive use of materials and colours in relation to existing setting and environmental impact

Standardised solutions to building design are not encouraged and will not be acceptable unless existing context (the design and character of the existing surroundings) suggests otherwise. Design solutions which seriously compromise the amenity and character of the area will not be permitted.

Highly innovative, experimental solutions will be encouraged but may not be suitable in every situation. In certain circumstances, the Council may request written design statements explaining various aspects of design solution e.g. explaining why a particular approach has been taken, and expect applications to show new buildings in their wider relationship with surrounding properties and the site (plans and elevations/perspective/ photomontages showing adjacent buildings, trees, landform etc)

(iv) Materials

The Council will particularly encourage the use of materials which are sustainable. The use of salvaged or recycled material is encouraged in most circumstances subject to local situation and there is a strong expectation that traditional materials will be used on heritage structures. The Council will discourage the over use of high energy materials (i.e. those which require high energy levels to make and dispose) where alternatives can be used and is also concerned about the potential long term affects of using Tropical Hardwoods, from non-managed sources.

Policy L/IMP7: Drainage Impact

New development must connect to a public sewer for the disposal of foul drainage if one is available within a Town, Village or Rural Community. If it is not available alternative forms of treatment may be considered and must meet with the approval of NOSWA and SEPA. The Council will promote the employment of Sustainable Urban Drainage Systems (Sustainable Urban Drainage Systems) in the disposal of surface water run-off, and unless otherwise advised by SEPA, will operate a presumption against the disposal of surface water directly to a watercourse. Proposals must meet the requirements of policies L/ENV21 (Private Waste Water Treatment and Drainage), L/ENV22 (Pollution Conditions), L/ENV23 (Private Water Supplies), L/ENV24 (Surface Water Drainage) and L/ENV26 (Control of Development in Flood Risk Areas) in Chapter 2, if relevant.

Policy L/T7: Parking Standards

Proposals for different forms of development must comply with the Council's 'Car Parking Standards' (available from the Council's Roads Service).

Where development (including housing) within the defined town centre cannot reasonably supply parking on site, (or where it is appropriate not to include parking), the developer will require to comply with the Council's system for 'commuted payments' for parking. Housing development in town centres which need not provide residential parking on site, must make provision for vehicular access for deliveries and emergencies.

In housing developments of over 30 houses, provision must be made for communal off-street parking, in addition to in-curtilage in order to permit the parking of large commercial vehicles away from road frontages.

Policy L/T4: Provision of Road Access

The Council will require that a suitable and safe access from the public highway is provided.

Policy L/ENV21: Private Waste Water Treatment and Drainage

The applicant must satisfy the Council in consultation with, SEPA and NOSWA that proposals for private sewage treatment can be implemented without adverse impacts on groundwater, and watercourses and provide for the efficient treatment of effluent.

Consideration will be given to advanced biological systems and new technology solutions as well as the more traditional septic tank and soakaway system. Disposal must satisfy testing procedures as required by the Council in consultation with SEPA and NOSWA and as outlined in appendix 3.

Policy L/ENV4: Tree Preservation Orders and Controls on Trees

The Council will serve Tree Preservation Orders (TPO) on potentially vulnerable trees which are of significant amenity value to the community as a whole.

Within Conservation Areas the Council will not normally agree to the felling or removal of trees and advice will be sought to determine when there is a need to serve a TPO.

The Council may attach conditions on planning consents ensuring that existing trees and hedges are retained or replaced. An applicant may be required to survey and identify those trees to be protected within the development site.

When imposing planting or landscaping conditions on certain developments especially in rural areas, the Council will specify the use of native species of trees and will prioritise the re-establishment and extension of hedgerows and/or shelter belts.

L/HC1: Development Within Rural Communities

The Council will presume to approve housing applications within rural communities subject to servicing capability of the site; design of the house and character of the rural community.

All land within rural communities will be covered by the principles for the control of new housing within built-up areas (policies L/IMP1 and L/IMP3 in Chapter 8). This means that proposals must not detract from the essentially "rural" nature of the community. The character of each community is defined in the text accompanying the rural community maps in appendix 1 to the Local Plan and in the separate planning policy guidance booklet. Developments located just within the community boundary will be required to provide appropriate landscaping.

OBJECTIONS-REPRESENTATIONS

There have been 18 objections/representations received for this application: -

- Mr and Mrs C Campbell, 11 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Simon Clark, 17 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- A and D Grant, 16 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- A D Johnson, 20 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG

- Graham Stables, Technical Manager, Property, Diageo Global Supply, Moray House, 1 Trinity Road, Elgin, Moray
- Kenneth T Duffus, 8 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Stephen, Wendy and Alan Struthers, 18 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Jonathon Preston, 7 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- C and M Stuart, 2 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Stephen Struthers, 18 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Mr and Mrs James Howie, 24 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Ms Margaret Paterson, 5 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Debbie and Frank Paterson, 22 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- James and Ann Howie, 21 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Miss Judith C Grant, 23 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Ms Kerry McMillan, Per Mr Gordon Joseph Shiach, 3 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Mrs Margaret Shiach, 3 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Dailuaine Conservation Group, Per Mr Gordon Joseph Shiach, Steering Group Leader, 3 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Adam Struthers, 18 Dailuaine Terrace, Carron, Aberlour, Banffshire, AB38 7RG
- Wendy Struthers, 18 Dailuaine Terrace, Carron, Aberlour, Banffshire, AB38 7RG
- Diane Preston, 7 Dailuaine Terrace, Carron, Aberlour, AB38 7RG
- Mrs E Payne, Per Mr Gordon Joseph Shiach, 3 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG
- Mrs Pin, Per Mr Gordon Joseph Shiach, 3 Dailuaine Terrace, Carron, Aberlour, Moray AB38 7RG

The main points of concern are: -

- The new housing would overlook the rear gardens of the existing terrace.
- Proposal conflicts with the emerging local plan designation for the site.
- The development would impact upon the historic character of Dailuaine.
- The design of the dwellinghouses is not in keeping with existing housing in Dailuaine.
- Increase in traffic and the damage to the environment as a result.
- Loss of animal habitats.
- Localised ground conditions and its suitability for septic tanks and soakaways.
- Safety issues surrounding impact of development on children playing.
- Feu disposition/burden on land prohibiting development of habitable buildings.
- Light pollution from two new houses and additional street lighting.

Agent/applicant response: A supporting statement has been submitted on behalf of the applicant. To summarise the statement provides background to development and comments on development plan policy relevant to the consideration of this application. It responds to key points raised in objections received and provides site-specific information supporting the proposal.

Comment: The proposed properties are approx. 20 metres from the rear of Dailuaine Terrace and front onto a private road. This separation distance is considered to be acceptable in amenity terms.

The site is not designated as amenity land in the current development plan.

It is not considered that a linear group of two houses to the rear of the existing terrace would prejudice the overall character of the existing community or existing terrace.

The houses are not overly suburban and have features more commonly found in rural housing. The houses are well proportioned, with features and materials that reflect the local vernacular. The design of the houses is considered to be acceptable.

The introduction of additional housing in this location will increase traffic. However, the Transportation Manager has not objected to the proposed development on traffic grounds.

The applicant has submitted an ecological survey of the site. SNH have been consulted and recommend an informative note be attached to any consent to ensure that care is taken during the construction period. This is to minimise disturbance to animal habitats and ensure that if protected species are discovered, all work should cease and further guidance sought from SNH. A condition ensuring that works are undertaken outwith breeding seasons further reinforces this.

In respect of the TPO designation the Order itself carries with it certain conditions to ensure that unnecessary damage is not caused during the construction period. A tree survey report submitted by the applicant identifies all trees to be felled, lopped, topped or trimmed during construction. By way of mitigating against any loss of trees, the applicant will replace any trees identified to be felled. Conditions will be attached to the final consent to reinforce this.

The adequacy of ground conditions for septic tanks and soakaways is now dealt with under Building Standards (Scotland) Regulations (2004) as amended, at the Building Warrant stage and any system used on the site would have to comply with current legislation.

An increase vehicular movement as a result of construction works and occupation of a house is to be expected but this is not considered to be a reason to refuse the application.

A burden prohibiting development of habitable buildings does not prevent someone from applying for planning permission or planning permission being granted. This is strictly a private legal matter to be resolved between the parties involved.

Additional domestic lighting for two properties is not considered to be a significant amenity issue and not sufficient to refuse the application. Additional street lighting is not part of the proposal.

CONSULTATIONS

Transportation Manager, Direct Services - No objection subject to conditions and informative.

Scottish Natural Heritage - No objection subject to informative.

SEPA - No objection subject to informative.

Regional Archaeologist - No objection.

Scottish Water - No objection subject to informative.

Contaminated Land, Development Services - No objection.

Environmental Health Manager, Development Services - No objection

Environmental Protection Manager, Direct Services - No objection.