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| Issue 48 | | Safeguarding of Inbye/Appportioned Croft land | |
| Development plan reference: | | Policy 48 (Para 20.16, Page 94) | Reporter: |
| Body or person(s) submitting a representation raising the issue (including reference number) | | | |
| Royal Society for the Protection of Birds Scotland (RSPB) (78), Laid Grazings Committee (83), Scottish Natural Heritage (SNH) (118), Glen Urquhart Community Council (174), Joyce Wilkinson (216), Kincaig & vicinity Community Council (225), Crofters Commission (271), Lochaber Partnership (452), A Currie (368), S & A Corbett, A & A Currie, W & K MacKenzie (519), Frank and Dianne Buckley (531), EMAC Planning LLP for Scotia Homes (532) | | | |
| Provision of the development plan to which the issue relates: | | Safeguarding of Inbye/Appportioned Croft land | |
| Councils summary of the representation(s): | | | |
| <u>The Policy</u> | | | |
| <u>Wildlife</u> | | | |
| Feels that this policy needs to go further. Currently areas of highest agricultural value get the most protection however they consider that it is often the least agriculturally productive areas that are best for wildlife. (78) | | | |
| <u>Protect best land locally</u> | | | |
| Considers that policies need to be developed to help protect the best local land in an area, in a similar manner as is proposed for crofts, and that a clear indication is given that local land use will be protected through individual local development plans. (174) | | | |
| It is felt that Policy 48 should not just apply to croft land but all agricultural land surrounding crofting townships in any national scenic area in the Highlands. This would prevent for example the loss of all the agricultural land on one of only 3 farms in a crofting district for house plots that are only lived in for a portion of the year, as has happened in the Arisaig, Morar and Moidart area. (216) | | | |
| <u>Prime arable land</u> | | | |
| Feels that good quality arable land should be protected from development. (452) | | | |
| Believes that the development of prime agricultural land should be supported where it is required to meet development requirements. (532) | | | |
| <u>Siting and Design</u> | | | |
| SNH: Support the reference to siting and design guidance but the guidance itself needs to be clear that it covers all croft land (including within SDA's) and needs to be strengthened to cover crofting landscapes in sufficient detail. (118) | | | |
| <u>Settlement Pattern</u> | | | |
| Crofters Commission: consideration should first be given as to whether these other interests can be satisfied by re-locating the proposed development onto | | | |

less productive land in the vicinity. It is felt that the use of existing settlement patterns as criteria may exasperate situations where development is no longer desired by the community in that area. (271)

Economic need

Concern that crofting is not viable and we are adding to problems for crofters seeking to diversify (that the Crofting Bill has started). This point is assumed rather than explicitly made. It is considered that croft land has been used to support the tourism industry through provision of B+B's, camping sites, and self catering units. It is believed that tourism itself would suffer if people are prevented from building holiday accommodation on their croft. This helps sustain the economy of small villages. (531)

How we implement the policy

Query whether it can be clarified in the policy if agricultural land is still to be classified using the McCauley institutes land classification system or will locally important agricultural land be the guide. It is considered that Planning officers are not qualified to grade land locally so there needs to be an alternative. It is felt that the present method of classifying land using the Macaulay institute guide does not safeguard the better land because most croft land in the Highlands is unimproved and can only become good quality land again through improvement. (216)

Support of the policy

Generally supportive of the policy as crofting needs to be explicitly taken into account when determining planning applications. (519)

They welcome this policy proposal to address problems from access to common grazings becoming impeded, access for tractors or vehicles to work croft land becoming impeded, and loss of the only available good land on the croft or in the crofting township. (216)

Considers that land should be investigated to its agricultural benefit before awarding planning permission. Feels that it is important to avoid unscrupulous crofters benefiting at the expense of potential crofters/community. (368)

Population retention in the crofting counties is an aim of the Crofters Commission. The Commission delivers this through its Regulatory powers, such as creating new crofts, division of a croft and assignation. This provides opportunities for both young people already in the locality to remain and for people outside the area to move in thus retaining and increasing the community population. Therefore planning regulations for new development in the countryside need to be flexible and not restrictive to sustain and enhance population in rural communities. (271)

The Commission welcomes the protection offered to agricultural land under Scottish Planning Policy. In particular the Commission would want to highlight the protection of croft inbye land as this a limited resource in the crofting counties. The value of this type of land in terms of agricultural production capability is classed as poor per the MacAulay Land Classification scale, but is of considerable productive value in relative terms for the crofting areas.

Where possible the protection of inbye land is desired unless there is a wider community benefit obtainable through development on this class of land. The Crofters Commission are in agreement with policy statement 20.16.3. (271)

The Crofters Commission welcomes the recognition by the Council that it is important to assess the land quality and location where development is proposed. As previously stated in paragraph 20.15.2, inbye croft land is a limited resource and development has to be weighed against the loss of this resource. Additionally there needs to be consideration given to development in positional terms to avoid sterilisation of the remaining land. (271)

The Commission is not yet a Statutory Consultee, however a Statutory Instrument (SI) which is being prepared under the National Planning Framework may change this next year. The Commission's role in planning applications involving croft land will be determined through the SI and the analysis of the pilot study with Highland Council Planning Department. (271)

In partnership with Highland Council Planning Department the Crofters Commission is looking to harmonise the process of decrofting with planning applications. A pilot study is being prepared with a proposal that when planning is being sought for development on croft land the Commission will look at the site in relation to any future decrofting application and give their views to the Planning Authority. The Commission may for example suggest the site sought for planning is relocated from good inbye croft land to an alternative site that will protect the better croft land or to ensure continuing workability of the croft. Ideally the Commission should be involved in all planning applications involving croft land but existing resources do not permit our involvement at this point in time to cover all areas. When the study is completed the Commission will be better placed to determine their role in planning applications involving croft land. (271)

Habitats Regulations Appraisal

SNH: As part of the Habitats Regulations Appraisal of the plan it is recommended that 4th bullet point is reworded. (118)

General Concerns

The policy does not mention the scandalous under-use, or non-use of existing crofting land by absentees. The significant extent of absenteeism is at odds with the 'productive use of land' as supported in para 20.15.1. It is felt that priority should be devoted to bringing this croft land back into productive use. (83)

They are concerned that the plan talks more about forestry than crofting and about the future for hill farming. They feel that forestry is an expensive and mediocre producer. (225)

Considers that planning officers need to be made aware through grazing committees/ local assessors of the quality of the land in relation to the croft itself or the whole township. There is also the option of planning officers being able to refer to specific crofts once the new Crofting Act is up and running through the content of the Grazings committees 5 year report being made

available to them. These local reports could be made available to Highland Council through the Crofters Commission and could provide useful information. (216)

Modifications sought by those submitting representations:

Policy

Wildlife

Feels that Policy 48 needs to protect less agriculturally important land which is good for wildlife. The policy should also outline the limited types of development acceptable on croft land e.g. where it leads to the continuation of active crofting. (78)

Protect best land locally

Would like us to protect locally important farmland in the same way as locally important croft land. (174, 216)

Prime arable land

Does not want any allocation of good quality arable land. (452)

Support of plan/policy approach (assumed) (532)

Support of the policy

Support the policy. (216, 519, assumed for 368)

Support the policy but with concern about the weight given to existing settlement patterns see below. (271)

Siting and Design

Recommends a reword of bullet point 4 to read, "In terms of other policy considerations, such as accordance with settlement pattern or avoidance of any adverse effect on a natural, cultural or built heritage feature, they can be considered acceptable." (118)

Settlement Pattern

Seeks an amendment to remove or lessen the weight of existing settlement patterns as criteria. (assumed) (271)

Economic need

Remove or lessen policy protection of inbye land (assumed) (531)

Housing in the Countryside

Policies 48 and 49 make reference to hinterland areas, at present this policy only makes reference to Policy 49. Therefore we recommend reference is added to Policy 36 by amending the last bullet point "... and meet the criteria set out in Safeguarding Inbye/Appportioned Croftland Policy 48 and New/Extended Crofting Township Policy 49". (118)

Habitats Regulations Appraisal

SNH: As part of the Habitats Regulations Appraisal of the plan it is recommended that 4th bullet point is reworded. (118)

Summary of responses (including reasons) by Planning Authority:

Policy Wildlife

The Council recognises that there is lesser quality agricultural land that is better from a wildlife perspective but there is appropriate protection of wildlife ensured through policies 58-61 of the plan. This policy is about protecting the best croft land, however when the planner is considering a planning application they will need to weigh up the impact on all of the policies of this plan before making their recommendation. The Council do not support having wildlife impact as the only consideration for assessing the appropriateness of a development proposal, or excluding agricultural value from the assessment.

Also the Council do not agree with RSPB that the only type of development suitable on croft land must directly relate to the working of that croft. Whilst crofting delivers many benefits it is not the only activity which provides social, economic and environmental benefits, and their needs to be a healthy rural population to support crofting activity. Therefore we agree with the Crofters Commission that population retention is important and that planning regulations for new development in the countryside needs to be flexible to sustain and enhance the population.

This policy tries to find the right balance between individual crofters, crofting as a whole and wider community interest. The policy ensures that multiple decrofts are only accepted in limited circumstances, and ensures good siting within the croft. This will tighten up on our consideration of crofting impact so that less inbye land is lost, and will ensure good siting, and therefore there should be less impact on crofting activities.

Siting and Design

With regards to SNH's concern regarding the siting and design Supplementary Guidance and how this addresses crofting areas, we intend to address siting and settlement pattern issues more fully in future iterations of this Supplementary Guidance. It is intended that this will go back to May Planning Environment and Development Committee.

When considering the link suggested from SNH to this policy from policy 36 Housing in the Countryside it has come to our attention that there is a need for greater clarity as to what is meant by a single house proposal on a croft. The Council therefore commends a factual change to the policy in this regard.

Rewording bullet point 4 in the way suggested takes a different position to policy 58 Natural, Built and Cultural heritage policy which does not talk in terms of 'avoidance of any adverse effect'. It is not felt that this policy needs rewording however if this bullet point is to be reworded then there should be a direct reference to policy 58. Using the wording suggested would introduce conflicting policy approaches.

Prime arable land

There is concern expressed about the loss of prime agricultural land. Whilst the starting position will always be to consider the suitability of land outwith the prime classifications first, there are occasions where prime land will be required for development purposes. These locations can offer other benefits

that can serve to outweigh the agricultural impact. If it is in the wider public interest to prefer this land for development as part of the spatial strategy then it is necessary. Whilst any loss of prime land is regrettable this is the approach the [SPP \(2010\)](#) supports and it has resulted in the allocations proposed within the A96 corridor which are essential to the Council's wider Vision and Spatial Strategy. The Highland wide Local Development states 20.15.2 that we will protect prime agricultural land in line with SPP (2010). However it is commended to the Reporter that this should be a policy rather than a statement to give this sufficient status.

Protect best land locally

The Council feels uncomfortable about extending the policy in this way. Crofting is distinct to other types of farming. It is felt that a separate planning policy is necessary to support the work the Scottish Government has progressed to support crofting. Small farms are not covered by the new Crofting legislation, and agricultural land is given its own protection through Scottish Planning Policy which protects prime land agricultural land (with reference to the MacAulay classification).

Also stepping aside from the arguments about whether farm land should be treated in the same way as croft land, the Council would have some difficulties in implementing the policy if it were to be extended in this way. This is because the current policy will be implemented with the Crofters Commission as a statutory consultee. We would not get the same information on the agricultural impact of the development proposal if it related to a small farm rather than a croft. The policy approach is reliant on the information received after agricultural assessment. This will be available through consultation with the Crofters Commission.

Settlement Pattern

The Council agree with the Crofters Commission that we need to consider whether relocating onto less good agricultural land can satisfy the other planning criteria (as an initial consideration). However the policy is written to protect the better croft land *where possible*, allowing the planner to balance the interests involved. There may be some different opinions when it comes to assessing individual proposals as the Crofters Commission may not put the same weight on settlement pattern issues as the Planning Authority. These cases will need to be considered on their merits sometimes it may be more appropriate to break somewhat from the existing settlement pattern and retain better croft land, but other times the opposite will be true. It is not considered that the policy should change.

Economic Need

With regards to the point made about balancing tourism and economic interests against loss of croft land, the policy tries to find the right balance between individual crofters, crofting as a whole and wider community interest. Therefore the policy recognises that where there is no alternative viable land (outwith inbye/apportioned land within the community), and where the proposal brings significant economic and social benefits to the community as a whole then development is acceptable in terms of this policy. We do not wish to allow individual crofters the opportunity to develop multiple house sites

on better inbye land without first considering whether there is a way where development might be more appropriately accommodated without unduly compromising the important resource of inbye land.

Housing in the Countryside

When considering the link suggested from SNH to this policy from policy 36 Housing in the Countryside it has come to our attention that there is a need for greater clarity as to what is meant by a single house proposal on a croft. The Council therefore commends a factual change to the policy in this regard.

Response to how we implement this policy

Cumulatively single or small scale applications for housing can have a significant impact on the resource of locally important croft land. The need for a joined up approach with the Crofters Commission is therefore essential. The policy proposed comes out of our joint working with HIE and the Crofters Commission.

The Council agrees that the MacAulay classification is of limited use when considering croft land as it is a point in time assessment with the potential for under utilised croft land to be significantly improved through the crofter's efforts. Also the purpose of MacAulay mapping is not to try to assess what might be considered locally important croft land. In the 6 month trial for the Ross Skye and Lochaber area (excluding our Hinterlands), the Scottish Government Rural Payments and Investments Directorate will provide an agricultural assessment of the croft and the proposed house site. From this they will provide a response which will help inform the planning decision. This change will give more information on the crofting impact of the proposal to the planner. The Scottish Government have decided to make the Crofters Commission a statutory consultee so this approach can be rolled out.

Habitats Regulations Appraisal

Separate discussions are ongoing with regard to completion of a Habitats Regulation Appraisal.

General Concerns

It is the Crofters Commission's role rather than the Councils to ensure effective use of croft land. The Act defines an absentee as a crofter who is not ordinarily resident within 32 kilometres of the croft. The Commission has to be satisfied that it will be in the general interest of that crofting community for the tenancy to be terminated and the croft let to another person. If you want more information on this work please contact the Crofters Commission.

With regards to the concern expressed about the balance of land use between forestry and farming this is not something we are addressing through the Highland wide Local Development Plan. When we review the Highland Forest and Woodland Strategy we will reassess the appropriateness of the locational policies and general policies to guide the planting of trees.

When the local reports from the grazings committees are available the Highland Council will refer to these when producing the Area Local Plans, and also potentially when dealing with planning applications.

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| Any further plan changes commended by the council |
| <p>Reference to the potential acceptability of a single house should have made reference to the history of development on the croft and any subdivision of the croft. The current wording is ambiguous and should be made clearer as some may assume that through subdivision of a croft or through incremental single house proposals they meet the policy (even though this does not minimise the loss of inbye/apportioned croft land). Therefore the policy should be amended to add in brackets after single house proposals (with consideration given to the history of development on the croft and any subdivision).</p> <p>Add policy for development on prime agricultural land.</p> <p><u>Policy for Development on Prime Agricultural land</u></p> <p>Development on prime agricultural land will not be permitted unless it is identified in the spatial strategy of the development plan or is necessary to meet an established need where no other site is available. Small scale development directly linked to rural businesses, including housing, may also be permitted. Renewable energy generation development or minerals extraction may be acceptable where restoration proposals will return the land to its former status.</p> |
| Reporter's conclusions: |
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| Reporter's recommendations: |
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