THE HIGHLAND COUNCIL	Agenda Item	7.4	
NORTH PLANNING APPLICATIONS COMMITTEE 9 JUNE 2015	Report No	PLN/035/15	

15/00411/FUL: Mr R and Ms J McCallum Site 1, Land to south west Of Ness Farmhouse, Ness Road East, Fortrose

Report by Area Planning Manager

SUMMARY

Description : Erection of house

Recommendation - GRANT

Ward : 10 - Black Isle

Development category : Local development

Pre-determination hearing : Hearing note required

Reason referred to Committee: More than five representations .

1. PROPOSED DEVELOPMENT

- 1.1 Planning permission is sought for the erection of a traditionally designed 1 ³/₄ storey dwellinghouse with dormer windows and a two storey bay window feature on the principle elevation. The property will sit in a large plot that extends to 0.12 hectares or thereby. The property will front onto Ness Road East and will be accessed from a driveway which will be shared with the house proposed on the adjacent plot (ref 15/00412/FULRC). Parking and turning facilities will be provided at the rear of the property.
- 1.2 Negotiations were held between the Planning Service and the applicant following the submission of an earlier application for the site (ref 14/03088/FUL). The discussions focused on the siting, design and layout of the site along with the means of access and informed the form and content of the current application. The earlier application was withdrawn prior to the submission of the current application.
- 1.3 There is currently direct access from Ness Road East into the land that is the subject of the application. The boundary with the public road is enclosed by a post and wire fence with a farm gate positioned in the centre of the boundary. The site has access to the public water supply and sewer.
- 1.4 Variations: None

2. SITE DESCRIPTION

2.1 The land which is the subject of both applications (ref 15/00411 and 15/00412/FUL) is currently unoccupied scrubland. It lies at a slightly lower level than the public road. It is enclosed by fencing along all four boundaries. Until recently it was regularly maintained in a condition which allowed it to be used as a play area/kickabout pitch with goalposts and nets. The land is surrounded by and shares boundaries with a number of residential properties. These houses are a mixture of modern and traditional styles, height, design and age. Those in closest proximity include Ness Farmhouse. This house lies to the north east. The sites were originally part of the garden ground of this property. To the east and south are the rear and side gardens of the houses on Fiery Hillock and Ness Road. To the west, on the opposite side of Ness Road East, are houses of a similar age to those built at Fiery Hillock. These houses sit in the garden ground of Ness House. Immediately to the south is a traditional single storey dwelling house, 2 Ness Road East. Access to this property is via a private driveway located between the house and the southern boundary of plot 2 (ref 15/00412/FUL).

3. PLANNING HISTORY

- 3.1 14/03088/FUL Erection of House Plot 1 Registered 08-08-2014 Withdrawn 18-09-2014.
- 3.2 14/03089/FUL Erection of House Plot 2 Registered 08-08-2014 Withdrawn 18-09-2014.

4. PUBLIC PARTICIPATION

4.1 Advertised : No

Representation deadline : 04.03.2015

Timeous representations : 8 Representations from a total of 7 addresses

Late representations : Fortrose and Rosemarkie Community Council submitted a late representation.

- 4.2 Material considerations raised are summarised as follows:
 - Loss of open space which has been in use for over four decades and is identified as amenity space in the Ross and Cromarty East Local Plan, the Inner Moray Firth Local Development Plan and The Highland Council Greenspace Audit 2010.
 - Concern regarding the scale and massing and location of houses on plots in relation to neighbouring properties/building line.
 - Development on site 2 (ref 15/00412/FUL) will impact on the amenity of 2 Ness Road East due to the proposed rise in ground level.
 - Development does not take account of Ness Road East which has no public footpath and is often congested by caravans and cars.
 - Lack of visibility at entrance point due to corner wall of 2 Ness Road East.

- There should be an off-site contribution towards replacing the amenity lost through the development of this site.
- 4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5. CONSULTATIONS

- 5.1 **Development Plan Team**: No objections.
 - Policy 28, Policy 34 and Policy 75 of the Highland Wide Local Development Plan apply.
 - The sites are covered by an amenity area notation within the adopted local plan inset map of the Ross and Cromarty East (RACE) Local Plan as retained in force (April 2012 retentions).
 - The Inner Moray Firth Proposed Local Development Plan (IMFpLDP) identifies the sites are greenspace.
 - This particular greenspace was and is safeguarded in the approved and emerging development plans because it was thought to be in public ownership, was accessible and provided local amenity value (albeit to a limited number of local residents and those passing the site).
 - A compromise should be sought which could involve either an element of onsite greenspace retained and formally transferred to community ownership or a contribution to off-site provision secured. Allowing one house, safeguarding neighbour residential amenity and retaining/creating a useable area of public open space may be very difficult to achieve therefore two houses and an off-site contribution may be more appropriate.
- 5.2 **Transport Planning Team**: No objections.
 - Assessed speed in that location is 25mph: the required visibility for this speed is 33m as derived from the national guidance document Designing Streets.
 - The achievable visibility splays south west of the access is 2.4m x 37m and the achievable visibility to the North East is 2.4m x 33 m. This is acceptable. Provision and maintenance of visibility splays should be conditioned.
 - Access as per SDB2 specification and requirements is required; including surfacing for 6m from the edge of the carriageway.
 - Adequate parking for 2 cars and turning space has been provided. Provision and maintenance should be conditioned.
 - Adequate bin collection point has been provided.
 - A road opening permit is required under section 56 of the Road Scotland Act.
- 5.3 **Scottish Water** : No Response.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

- Policy 28 Sustainable Development
- Policy 34 Settlement Development Area

Policy 75 Open Space

6.2 Ross and Cromarty East Local Plan As Retained in Force (April 2012 retentions).

6.3 Site lies within the settlement development area of Fortrose. The application sites are covered by an amenity area notation within the adopted local plan inset map. The associated general policy states: "The Council will safeguard these areas from development not associated with their purpose and function." The green hatched notation and associated BP policy was not retained post April 2012.

7. OTHER MATERIAL CONSIDERATIONS

7.1 Inner Moray proposed Local Development Plan

Fortrose Settlement map indicates that the site is open space.

8. PLANNING APPRAISAL

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

8.3 **Development Plan Policy Assessment**

- 8.4 The annotation on the Fortrose inset map of the Ross and Cromarty East Local Plan which identifies the sites as amenity land (A) remains in force whilst the background policy (BP 3), was superseded by the adoption of the Highland wide Local Development Plan in 2012.
- 8.5 The application sites are located within the Settlement Development Area (SDA) for Fortrose as defined in the adopted Ross and Cromarty East Local Plan as retained in force. Policy 34 of the Highland-wide Local Development Plan (HwLDP) therefore applies. Policy 34 states that we will support development within SDA's if proposals are judged to be compatible with the existing pattern of development, they conform with existing and approved adjacent land uses, are compatible with the landscape character and any natural, built and cultural heritage feature and meet the Design for Sustainability requirements of Policy 28

- 8.6 Policy 28 (Sustainable Design) of the HwLDP aims to ensure that development is sustainable and lists the criterion against which proposal shall be assessed. The parts of the policy of particular relevance to this proposal states that proposals should be assessed on the extent to which they "are compatible with public service provision, impact on individual and community residential amenity" and "demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environment and in making use of appropriate materials".
- 8.7 Policy 75 (Open Space) of the HwLDP seeks to protect areas of high quality, accessible and fit for purpose open space/amenity areas. The part of the policy of particular relevance to this proposal states that existing areas of open space identified in the Audit of Greenspace will be safeguarded from inappropriate development unless the site is not fit for purpose.
- 8.8 As stated in the consultation response from the Development Plan team this particular greenspace was thought to be in public ownership and therefore it has been, and is, safeguarded in the approved and emerging development plans.
- 8.9 However, it is clear that the use of the open space by local residents and those passing the site, albeit for many years, has been on a grace and favour basis. The maintenance arrangements have been informal. The land is not in public ownership and there is no legal agreement in place requiring it to be kept available for this purpose.
- 8.10 The current owner has recently chosen to remove the goal posts and fence the land off to exclude public use. As a result of these actions, which are entirely lawful, the land is no longer available to the public. Consequently the land can no longer be considered as an area of public open space.
- 8.11 The applicants have indicated that they wish to lodge a voluntary financial contribution towards the upgrade of the play area and tennis court at Rosemarkie Beach. These facilities are on land owned by the Council and leased to the Rosemarkie Amenities Association.
- 8.12 The Planning Service has sought the views of the Amenities Association who have confirmed that they would welcome the contribution. As they are currently seeking to secure other monies from other sources they wish the contribution to be held by the Council in the meantime.
- 8.13 The desire by the developer to acknowledge the loss of the open space is welcomed as is their wish to contribute to an existing facility.
- 8.14 It is acknowledged that by including this land in the Audit of Greenspace, which informed the allocation in the Inner Moray Firth Local Development Plan and also the policy assessment under the Highland wide Local Development Plan, there has been a public expectation, demonstrated through the representations received, that the land could be protected and retained as amenity land. However, given that the land is in private ownership and there is no legal agreement in place requiring it to be kept available for amenity purposes, the Council would be acting unreasonably to withhold planning permission solely on the grounds of non

conformity with Policy 75 – Open Space - of the Highland wide Local Development Plan. As stated above, now that the sites have been legally fenced off and the goal posts removed, the land is no longer fit for purpose.

- 8.15 With respect to the manner in which the site is to be developed, the land is located in an established residential area and therefore the use of the land for housing is compatible with the surrounding uses.
- 8.16 The siting, design and a massing of the house on this plot, taken together with the adjoining application (15/00412/FUL) is considered to be appropriate for this location. The area is characterised by a mix of house styles, ages and designs with more modern houses set in amongst large detached properties. This pattern of development has resulted from the garden grounds of the older properties being developed over the years.
- 8.17 The layout of the plot, in particular the means of access and the parking layout will allow the property to have an area of landscaped garden ground along the road frontage. As a similar layout is proposed for the adjacent plot (15/00412/FUL) a soft edge will be maintained for the majority of the boundary with the public road. It is considered that the strong traditional design proposed for the houses and the layout of the development are compatible with the established character of the area.
- 8.18 As the houses will be positioned close to the public road, both sites will have large back gardens providing good separation, in excess of 20 metres, from the existing houses at Fiery Hillock as well as Ness Farm House. Likewise there will be no significant impact on the amenity and living conditions of the house on the opposite side of Ness Road East due to the high boundary walls, mature landscaping and the separation distances, in excess of 30 metres, between the properties.
- 8.19 It is recognised that the overall quality of the development will be enhanced by the use of high quality external materials, as well as the garden ground being landscaped timeously. These matters can be covered by condition.
- 8.20 Concern has been expressed about the overall height of the house proposed on plot 2 (ref 15/00412/FUL). This is dealt with in a separate report to this application. It has been agreed with the applicants that the ground level for this house will not be increased to the level of the public road adjacent to this plot, as indicated on the submitted site plan, rather the ground level will be increased by 400mm above that proposed for the house on plot 1. The submission of detailed levels will be covered by a suspensive condition to ensure that the final levels are agreed with the Planning Service. This will include reference to the ridge levels of the adjoining houses.
- 8.21 With respect to the proposed means of access, comments have been received expressing concern about road safety due to the condition and geometry of the existing road. No objections were received from Transport Planning in their consultation response. The geometry of the road means that traffic speeds are judged to be not to be in excess of 25mph. The visibility splays achievable from the

access point are acceptable for this speed. The visibility splays are limited by the corner of the house to the south west, 2 Ness Road East and, to a degree, by the boundary hedge of Ness Farm House. The latter encroaches onto the public road verge therefore improved visibility for all road users could be achieved by cutting this back to the property boundary. This is a matter for Community Services to pursue with the owners of Ness Farm house if they consider this appropriate.

8.22 The properties will be required to connect to the public water supply and drainage systems. It is noted that Scottish Water failed to provide a timeous response to the consultation request. The developer will require to secure separate consent from Scottish Water to connect to their infrastructure.

8.23 **Other material considerations**

8.24 As stated above in paragraph 7.1 the site is identified in the emerging Inner Moray Firth Local Development Plan as an area of open space. This allocation follows on from the audit on greenspace which was carried out in 2010 to inform policy 75 of the HwLDP. For the reasons set out above in paragraphs 8.7 to 8.15 the ownership of the land and the absence of any legal agreement to secure its use as amenity land are of considerable significance in the assessment of the applications and the weight that can be given to the emerging local plan and policy 75.

8.25 Other non-material considerations

Other matters that have been raised by third parties related to the accuracy of an aerial photograph of the site with the house plots superimposed, as well as some 3D images. These documents are submitted in support of the application rather than as part of the proposed plans. The possible future development of a further two houses in the proposed rear gardens is also highlighted. Whilst it is acknowledged that the sites are large any future subdivision is speculation at this time and outwith the remit of the assessment of the current applications. Any future applications would have to be assessed on their individual merits.

8.26 Matters to be secured by Section 75 Agreement

8.27 None

9. CONCLUSION

9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. RECOMMENDATION

Action required before decision issued N

Subject to the above, it is recommended the application be Grant subject to the following conditions and reasons / notes to applicant:

1. Prior to the commencement of all other development a set of detailed cross sections of the site showing the existing ground levels, taken from the datum point marked A on plan 14/100/01, and the proposed ground levels, finished floor levels and finished ridge height of the house and the ridge level of Ness Farm House to the north east and the proposed house to the south (15/00412/FUL) shall be submitted for the consideration and written approval of the Planning Authority. Thereafter the development shall proceed in accordance with the details approved.

Reason : To ensure that the development is sensitive to, and compatible with, its context.

- 2. No other development shall commence until the site access has been constructed in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines and the attached Access Schedule (dated June 2015) with:
 - i. the junction formed to comply with drawing ref. SDB 2; and
 - ii. visibility splays of 37m to the south west and 33m to the north east as measured from a point 2.4m from the centre line of the proposed junctions (15/00411/FUL and 15/00412/FUL) shall be maintained in perpetuity. Within the stated visibility splays, at no time shall anything obscure visibility between a driver's eye height of 1.05m positioned and an object height of 0.60m anywhere along the Y dimension.

Reason : In the interest of road safety.

3. Prior to the first occupation of the development hereby approved, the car parking and access arrangements detailed on approved plan ref. 14/100/01 shall be completed in full and made available for use. Thereafter, all car parking spaces shall be maintained for this use in perpetuity

Reason : In order to ensure that the level of off-street parking is adequate.

4. All landscaping works shall be carried out in accordance with the scheme and plans approved as part of this permission. All planting, seeding or turfing as may be comprised in the approved scheme and plans shall be carried out in the first planting and seeding seasons following the commencement of the development, unless otherwise stated in the approved scheme. Any trees or plants which within a period of five years from the completion of the development die, for whatever reason, are removed or damaged shall be replaced in the next planting season with others of the same size and species

Reason : In order to ensure that the approved landscaping works are properly undertaken on site

5. No development or work shall commence until a detailed specification for all proposed external materials and finishes (including trade names and samples where necessary) has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details.

Reason : To ensure that the development is sensitive to, and compatible with, its context and local architectural styles.

REASON FOR DECISION

The proposals represent a minor departure from the provisions of the Development Plan in that it will result in a loss of an area of identified open space. However the land is in private ownership and is lawfully no longer available for public access it therefore cannot be considered as an amenity space. There are no other material considerations which would warrant refusal of the application.

TIME LIMIT DIRECTION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

- 1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
- 2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Accordance with Approved Plans and Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks and Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <u>http://www.highland.gov.uk/yourenvironment/roadsandtransport</u>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationfo rmsforroadoccupation.htm

Mud and Debris on Road

Please note that it an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Signature:	Dafydd Jones
Designation:	Area Planning Manager North
Author:	Erica McArthur
Background Papers:	Documents referred to in report and in case file.
Relevant Plans:	Plan 1 –Location Plan
	Plan 2 – Site layout Plan Ref: 14/100/01
	Plan 3 – Ground Floor Plan Ref: 14/100/01
	Plan 4 – First Floor Plan Ref: 14/100/01
	Plan 5 – Elevations Ref: 14/100/01
	Plan 6 – Section AA Ref: 14/100/01





stained timber fence posts and slats etc



Typical Fence Detail (Road side) Scale 1 50

NOT FOR CONSTRUCTION Planning Application Drawings

Site Plan Scale 1 : 250

Drawing No: 14/100/01

Jan 2015

New House Ness Road Fortrose Ross-shire

Site 1 Robert and Joanne McCallum

Site 2 Fiona and Graham McCallum

MACBEATH ARCHITECTS

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