



Decision by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2209
- Site address: Land 60 metres south east of Shellcroft, Munloch, IV8 8NY
- Appeal by Mrs Robyn Myer against the decision by the Highland Council
- Application for planning permission in principle 18/05203/PIP dated 8 November 2018 refused by notice dated 28 January 2019
- The development proposed: erection of a house
- Date of site visit by Reporter: 13 May 2019

Date of appeal decision: 30 May 2019

Decision

I dismiss the appeal and refuse planning permission in principle.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Highland-wide Local Development Plan (2012) (“the HWLDP”), the Inner Moray Firth Local Development Plan (2015) and the Housing in the Countryside and Siting and Design Supplementary Guidance.

2. Having regard to the provisions of the development plan, the main issues in this appeal are the appropriateness of development of a single house in the countryside at the proposed location and the proposed development’s siting, design and sustainability.

Compliance with the development plan

3. The appeal site is within an area designated as hinterland in the Inner Moray Firth Local Development Plan. The key development plan policies for determination of the appeal are HWLDP policy 35 on housing in the countryside (hinterland areas) and policy 28 (sustainable design).

Policy 35

4. Policy 35 provides a presumption against housing in the open countryside of the hinterland around towns. There is a defined set of exceptions. The appellant has argued that the proposed development falls within two exceptions.



5. First, the appellant argues that the proposed development involves redevelopment of derelict land.

6. In my view, where the policy uses the word “derelict” in respect of land, it implies land that has been previously developed, and so not a greenfield site like the appeal site.

7. I find that this is how the term is used in the HWLDP. The policy exception itself refers not to “development” of derelict land but to its “redevelopment”. The first clause of the policy exception (before the semi-colon) refers conversion or reuse of traditional buildings alongside redevelopment of derelict land, implying that these two branches of the policy deal with developments of similar type. The second clause (after the semi-colon) refers to the two branches in the first clause as “development of brownfield sites”, before adding the further criteria to be applied before such development can be supported. These are that the site’s return to a natural state is not readily achievable and that a wider environmental benefit can be achieved through development. These further criteria are acknowledged as relevant to the proposed development in the appeal submission, even though the reference to “brownfield sites” is left out. There are other uses of the term “derelict” in HWLDP, including on pages 93, 145, 162 and 163, all of which relate to previously developed land. The term is used similarly in the supplementary guidance.

8. The appellant has argued that the site has no commercially viable agricultural use and so can be regarded as “derelict”. In my view, whether the site has a commercially viable use is a different question from whether it is derelict. If the appellant’s view was correct, then very large parts of the Highland Council’s area would be derelict land to which the policy exemption would apply. I cannot accept such a wide exception from the policy was intended. However, I do consider that, if the land did have another viable use, that would be a material consideration in this appeal. I deal with this point below.

9. I find that the appeal site is not derelict land. Therefore the policy exception does not apply.

10. Even if I am incorrect in my interpretation of the term “derelict” as used in the policy, I find that the further two criteria of the policy exception are not met:

- While it might be arguable that former croft land, used previously for grazing or growing vegetables, is not in a “natural state”, I do not consider that its return to a natural state would be at all difficult to achieve.
- Although the appellant referred to the appeal site as an “eyesore”, I did not find it so. Although it has a few whin bushes growing by the burn, it is not in a condition that is noticeably unattractive. In the broader landscape, it is of a somewhat different character from the large fields beside it, but I do not consider that that makes it unattractive. On the approach to Munloch from the south west, it is in relatively prominent position. On the day of my site inspection, when the fields on either side were green, the site did not stand out greatly. I can believe there are times, if the neighbouring fields are cultivated, when it will have a different colour and so stand out from the neighbouring land. Even so, I consider it would appear simply as part of the patchwork of a cultivated area, would be visually associated with Shellcroft directly above it and would not be perceived as visually jarring or otherwise detract from the

landscape. I therefore do not consider that there would be any particular improvement to the landscape from the development of a house on the site – rather the opposite.

11. Second, the appellant argues that the proposed development would meet the criteria for the policy exception for acceptable expansion of a housing group. The HWLDP states that the policy exception's criteria are set out in the Housing in the Countryside and Siting and Design Supplementary Guidance.

12. Although called “guidance”, the Housing in the Countryside and Siting and Design Supplementary Guidance is really a policy and part of the development plan. I must apply the policy criteria set out in it in order to identify whether the proposed development falls within the policy exception for expansion of housing groups. (Once I have identified the policy position in development plan, I can of course set that aside if other material considerations outweigh the plan).

13. The relevant criteria are set out in paragraphs 6.4 to 6.14 of the supplementary guidance. Paragraph 6.10 defines a “housing group”. It states that there must be at least three physically detached houses in the group. There are only two houses near the appeal site with which the proposed development might form a group: Shellcroft and Mardaville. There is therefore no existing housing group (as defined in the development plan) of which the proposed development might form part.

14. Since the proposed development falls within neither of the suggested policy exceptions, I find it would not comply with HWLDP policy 35.

Policy 28

15. Policy 28 relates to sustainable design. I acknowledge that there is limited design information, since this appeal relates to an application for planning permission in principle. However, it is plain that change to site topography would be required to create the access into the site (there is presently a steep bank to the public road at the proposed site entrance), to create a development platform for the house above the flood plain, and probably to create the hardstanding for parking and turning. This work would be carried out at a site that is (as I have said) relatively prominent from the approach to Munloch.

16. These changes, and the development overall, would be small-scale. The proposed development would be close to existing houses. The adverse effect on the landscape should therefore not be overstated. However, I do consider that there would be an adverse effect: an incremental creep of suburbanisation in the landscape.

17. Occupants of the proposed development would not find it particularly accessible to public transport. They would be likely to depend heavily on private car use to access any public facilities.

18. I therefore do not consider that the proposed development meets the policy 28 requirements to demonstrate sensitive siting in keeping with local character or to be accessible to public transport.

Compliance with the development plan

19. I have found that the proposed development would be contrary to HWLDP policies 28 and 35. It does not have substantive support from other policies in the development plan. I therefore find it contrary to the development plan.

Other material considerations

The availability of a commercially viable or reasonably beneficial use

20. The appellant has provided a history of the appeal site, which is, in brief, that it was croft land attached to Shellcroft, but that the croft house and other land north of the public road were sold separately and the appeal site only retained. The appellant argues that the appeal site cannot easily be put to a commercially viable agricultural use as part of a unit with either of the neighbouring fields. This does raise the question of why the site was retained and not sold with other parts of the croft.

21. I have no evidence of the land being marketed for use or that would otherwise demonstrate it is commercially unviable. Nonetheless, I can see that there would be difficulties in putting the site to agricultural or other commercial use. It is a small site, separated from the field to the east by the Little Burn, from the field to the west by the access road to Ar Dachaidh, and from Shellcroft to the north by the public road. However, it does not appear to me that the appeal site is incapable of any reasonably beneficial use if the present appeal is refused. It has apparently been used in the past for growing vegetables and also for occasional grazing.

22. Furthermore, it would not follow, even if the site had no other reasonably beneficial use, that it ought to be developed for a house. There is a procedure in part V of the Town and Country Planning (Scotland) Act 1997 that provides a remedy for a landowner in a situation where permission for a proposed development has been refused and the land in respect of which the application was made has no reasonably beneficial use. The landowner can serve a purchase notice on the planning authority requiring it to acquire such land.

23. In the present case, even if I am wrong that there are beneficial uses to which the land could be put, I do not find any difficulties in this case in putting the land to use sufficient to cause me to set aside the development plan policy on housing in the countryside.

Proximity to existing houses

24. I have noted the existence of two houses near the appeal site and also its proximity to Munloch and to another two houses at Ar Dachaidh. I have also noted the views of members of the council regarding acceptability of development in such circumstances, as reported by the appellant.

25. Paragraph 19.7.2 of the HWLDP states the purpose of the housing in the countryside policy as being to take a managed approach in areas in the hinterland of towns where there is pressure for commuter-based housing development, so as to prevent suburbanisation of the countryside and the breaching of service network capacities. There is no evidence that the proposed development would have any unacceptable effect on infrastructure capacity. I

have already found, however, that the proposed development would represent an increment of suburbanisation in the landscape. Given the likely reliance of any occupants on private car use, the proposed development would also have an adverse incremental effect on the sustainability of the built environment.

Precedent

26. While I acknowledge that any adverse impact upon the landscape or sustainability from the proposed development alone would be relatively limited, HWLDP policy 35 is aimed at preventing cumulative effects upon the landscape and sustainability from developments such as that proposed. I am not persuaded that there is any substantive reason to distinguish the proposed development from other proposals that might be made, contrary to policy 35, for a single house in the hinterland countryside. I consider the grant of the appeal would set an undesirable precedent.

Conclusion

27. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and there are no material considerations that would still justify granting planning permission.

Robert Seaton

Reporter