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Ms K Lyons
Highland Council
Sent By E-mail

Our ref: PPA-270-2244
Planning Authority ref: 17/03202/FUL

8 February 2022

Dear Ms Lyons

PLANNING PERMISSION APPEAL: DAFFODIL FIELD, MILLER ROAD, CROMARTY, IV11 8XH

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

DPEA is continuing to look at how we can improve the services we deliver and welcomes contributions from all those involved. In this regard I would be grateful if you could take five minutes to complete [our customer survey](#).

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I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Christopher Kennedy

CHRISTOPHER KENNEDY
Case Officer
Planning And Environmental Appeals Division



Decision by Chris Norman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2244
- Site address: Daffodil Field, Miller Road, Cromarty, IV11 8XH
- Appeal by John Nightingale against the decision by The Highland Council
- Application for planning permission 17/03202/FUL dated 7 July 2017 refused by notice dated 29 January 2021
- The development proposed: Erection of three houses and erection of garage/boathouse
- Date of site visit by Reporter: 1 July 2021

Date of appeal decision: 8 February 2022

Decision

I dismiss the appeal and refuse to grant planning permission.

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) and its related supplementary guidance, and the Inner Moray Firth Local Development Plan 2015 (the IMFLDP). The appeal seeks full planning permission for the erection of three detached houses, revised from four in 2020, together with a detached garage and boathouse on 0.2 hectares of land known locally as the Daffodil Field in the eastern part of Cromarty Conservation Area, adjacent to the category 'B' listed Burnside Cottage and Clunes House.
2. Having regard to the provisions of the development plan the main issue in the appeal is whether the proposal accords with HwLDP policy 57 'Natural, Built and Cultural Heritage' and its related supplementary guidance 'Highland Historic Environment Strategy' (the 2013 guidance). I consider that it is also necessary for me to determine whether the proposal would accord with policy 28 'Sustainable Design' and policy 29 'Design Quality and Placemaking'. I find that other applicable policies of the HwLDP are policy 34 'Settlement Development Areas' and policy 49 'Coastal Development'. Also of relevance are Policy 51 'Trees and Development', policy 56 'Travel', policy 64 'Flood Risk'; policies 65 and 66 'Waste' and 'Surface Water Treatment', policy 75 'Open Space' and policy 77 'Public Access'.
3. The IMFLDP confirms that the site of the proposal is within the Cromarty settlement development area and on land which is not safeguarded as greenspace. In accordance with the IMFLDP the principle of development is acceptable, subject to all development

being in keeping with the scale and character of the conservation area and the proposal being compliant with relevant policies in the HwLDP.

4. Because the appeal site is within Cromarty Conservation Area I must also have regard to the duty imposed by section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (1997 Act) which requires that special regard must be had to the preservation or enhancement of the conservation area. As the site adjoins two category 'B' listed buildings under section 59(1) of the 1997 Act I must have special regard to the desirability of preserving these buildings or their settings or any features of special architectural or historic interest which they possess.

Natural, Built and Cultural Heritage

5. Policy 57 'Natural, Built and Cultural Heritage' provides that the outstanding natural, built and cultural heritage of the Highlands has to be fully considered when development proposals come forward. The council's 2013 guidance advises that each designated conservation area has its own unique character which it is desirable to both preserve and enhance. Careful and controlled management of conservation areas is therefore essential to ensure that their special character is protected and the historic value and quality of the areas is not lost or eroded by inappropriate alteration to existing heritage assets, or by the introduction of poor quality, aesthetically damaging new developments. The policy provides that category 'B' and 'C' listed buildings are regarded as locally and regionally important features. In my determination of the appeal I must therefore consider the local importance of the built heritage assets of Cromarty, the form and scale of the proposal and its impact on the conservation area, the listed buildings and their setting.

The effect of the proposal on Cromarty Conservation Area

6. The eastern part of the conservation area around the site of the former medieval burgh differs with both that of Fishertown and the more geometric layout of the town between High Street and the harbour to the west. The council contends that the proposal does not demonstrate sensitive siting in keeping with local character and the historic environment and it would not preserve or enhance the character or appearance of the conservation area.

7. Within the western section of the site three detached houses with individual gardens would be constructed together with a garage and boathouse to the north-east. The development would be served by a cul de sac leading, at an angle, from a new access onto Miller Road. The three houses would include natural slate roofs and lime rendered walls, with timber-clad walls to the rear wing of unit two. The design of the proposal is described by the appellant as being contemporary architecture going beyond a typical residential development and that it reinforces the character and organic plan Cromarty. It is contended that the proposed development, on what is described as a gap site, reflects the existing village fabric and would bring change that is not harmful to the character or appearance of the conservation area.

8. I find that there is some merit in the design and finish of the proposal insofar as it relates to the traditional vernacular styles found elsewhere in Cromarty particularly in Fishertown. I have noted that the site currently presents a neglected and unkempt appearance, supporting unmaintained vegetation in contrast to the well maintained private

gardens in its proximity. I find this to be an, albeit temporary, detraction from the appearance of the site and its surroundings. However it does not justify permanent development to address its current appearance or to protect and enhance the conservation area.

9. I find that the more open character of the eastern part of Cromarty plays an integral role within the overall designated area. It is characterised by its coastal proximity, its openness, the distinctive grouping of listed buildings around Miller Road and Causeway and its historic and cultural links to the medieval burgh, all of which play a very important role within Cromarty. It is an important part of Cromarty's culture and history and this easternmost part is of equal character and attractiveness as elsewhere in the town.

10. The appeal site forms an open and undeveloped linkage between the conservation area to the adjoining Cromarty Firth. It provides for sweeping views to the Cromarty Firth and beyond to persons travelling westwards from Causeway into Miller Road, adjacent to Clunes House. To an equal extent similar coastal views are provided to persons travelling eastwards on Miller Road, framed by the listed Burnside Cottage to the north and the iconic 'B' listed Old Brewery Building to the south. It lies opposite the former walled garden of Cromarty House adjacent to recent excavations of the former medieval burgh. The Daffodil Field, with its mature vegetation and random rubble walls, is also characterised by the other listed buildings elsewhere on Causeway. The landscaping proposals for the appeal site include a proposed orchard which would, over time, mask the extensive views over the site to the Cromarty Firth beyond and which currently contribute to the coastal character, experience and setting of the conservation area.

11. I am in no doubt that, especially during the growing season, the site's current unmaintained appearance mars the character and appearance of the conservation area, and I have acknowledged qualitative aspects of the design of the proposal which could be befitting elsewhere. However the sensitivities of the site are such that the proposal, if it were to proceed, would be an incongruent and discordant feature in the context of east Cromarty. Its development on an area of open space and its design would not relate to the planned form of this part of the conservation area. Despite the quality of the design it would introduce three houses and a detached garage and boathouse around a cul-de-sac layout with a finish, design and appearance which would be alien to the immediate vicinity of the conservation area. It would not enhance or protect this part of Cromarty Conservation Area, inconsistent with policy 57 of the HwLDP.

The effect of the proposal on listed buildings

12. Around the open area centred on Garden House there is one category 'A' listed building and several category 'B' listed buildings, including the wall on the south side of Miller Road. Also framing the views eastwards towards Miller Road is the category 'B' listed Old Brewery arts centre, a popular local and visitor attraction. These domestic listed buildings are of a markedly different style of architecture than that exemplified by the vernacular detailing of Fishertown which is reflected in the design of the three proposed houses.

13. To address the proposal's effect on the setting of adjacent listed buildings the appellant argues that existing vegetation, including the retained ash tree, the proposed orchard and the mature gardens within the curtilage of Burnside Cottage and Clunes House

means that the setting of these adjacent listed buildings would not be adversely affected. However to the contrary I find that 'key' views to or from the closest domestic listed buildings would be interrupted by the proposed development. The development would dominate and detract from the ability to appreciate the listed buildings. In conclusion I judge that the visual impact of the proposed change relative to the scale of the listed buildings and their overall settings is not minimal.

14. From the listing descriptions of both Burnside Cottage and Clunes House I conclude that the proposal would not directly affect any features of special architectural or historic interest that these listed buildings possess.

15. However, I consider that the proposal would offset and undermine the long-established and undeveloped coastal setting of Burnside Cottage, particularly when seen from the east around the Old Brewery arts centre. Clunes House is part of a cluster of inter-related buildings at the corner of Miller Road and Causeway, similarly set in mature gardens and which also help to define its setting. Within principal east facing views from Miller Road the west facing gable of Clunes House and the wall south of Miller Road are currently seen. Taking into account the separation distance from the appeal proposal and the proposed orchard, the open coastal setting of Clunes House would be similarly altered.

16. In both cases the coastal location, originally afforded to the listed buildings, plays an important part in their setting. It would be lost even though it is, to an extent, marred by the unmaintained vegetation on the site which could, in any event, be readily remedied. The coastal aspect, which is integral to the buildings' settings, would be undermined and lost in perpetuity if the development were to proceed. I conclude that the proposal does not preserve the setting of adjacent listed buildings contrary to policy 57 of the HwLDP.

Conclusion on the impact of the proposal on the built and cultural heritage

17. In drawing these strands together I find that the easternmost part of Cromarty Conservation Area has a well-defined, recognisable and individual historical and cultural character. The Daffodil Field within east Cromarty strongly influences this character. The proposal would alter the coastal background of the undeveloped land which provides the setting of both Burnside Cottage and Clunes House. It would not preserve the localised sense of place that is very much influenced by the proximity of the Cromarty Firth.

18. I disagree with the appellant and do not consider the proposal would have a 'close relationship' with the public realm in the vicinity of the site and in the eastern part of Cromarty. It would not reinforce the character and organic plan of the settlement. Rather, I conclude that the proposal would have an unacceptable impact on Cromarty Conservation Area, and the setting of the listed buildings within its vicinity. I judge that it would be an incongruous and discordant feature in the eastern part of Cromarty, conflicting with the prevailing character and appearance that I describe above. It would neither preserve nor enhance the conservation area. It would undermine the setting of the adjacent listed buildings. The proposal is contrary to policy 57 of the HwLDP.

Sustainable Design

19. HwLDP policy 28 'Sustainable Design' sets out 13 necessary tests for a proposal to be supported. I am mindful that there are no public service and other infrastructure

constraints; the site is accessible to public transport provision in Cromarty; energy efficiency could be addressed through building standards procedures, there are no physical constraints that have been brought to my attention and a site waste management plan could address this matter if the development were to proceed. I am satisfied that the proposal would not adversely impact on residential amenity and there are no objections from the council's environmental health service in this regard. A condition could be imposed on the development to ensure that it is built, taking into account rising sea levels due to climate change. I have no evidence that the proposal would adversely impact on the natural environment, and there is some community benefit resultant from enhanced footpath links to the shoreline.

20. Notwithstanding these positive attributes I have described how I find the site to be incompatible with the character and cultural, built and historic heritage of Cromarty, a test included in policy 28. The design is not compatible with local character and its historic environment. Accordingly the proposal would otherwise not accord with the requirements of policy 28 and would not be sustainable design.

Design Quality and Placemaking

21. In accordance with policy 29 'Design Quality and Placemaking' new development must make a positive contribution to the architectural and visual quality of the place in which it is located, where appropriate. I have noted the quality of design and attention to detail embraced by the proposal, and the steps that have been taken to create qualitative placemaking. In designing the proposal the appellant has sought to 'capture' the vernacular design of Cromarty. It is contended that the proposal has adequate connectivity, it maximises light and the massing of the proposal negates a 'suburban' feel to its design. Additionally, much of the site would be retained and planted and the buildings, it is argued, create an authentic "rural" character.

22. The closest proposed house would be around ten metres from the boundary of Burnside Cottage, itself some 32 metres distant and I am satisfied that it would not adversely impact the residential amenity of adjoining householders. Clunes House would be around 50 metres to the east and separated by the proposed orchard. Significantly and contrary to the appellant's Planning and Design Statement and policy 29 of the HWLDP, I find that there is little sensitivity and respect towards the distinctiveness of this particular part of Cromarty Conservation Area. The vernacular design reflects and would be befitting that of Fishertown where there are examples of common design detail. However the proposal is located in a distinctive part of the conservation area, open in character and shared by several listed and larger detached houses. The proposal does not have regard to the layout and historic pattern of development of the part of Cromarty around Miller Road and Causeway. It is therefore contrary to policy 29 of HWLDP.

Coastal Development

23. From parts of Causeway to the south east of the appeal site the proposal would interrupt views to the Cromarty Firth and beyond. From the Cromarty Firth, including the Nigg ferry, excursion craft and large cruise vessels destined for Invergordon, the shoreline is an important aspect of the conservation area. It is in close proximity to the undeveloped coastline east of Clunes House and in turn leading to the headland at South Sutor. The site

is an undeveloped part of Cromarty's historic coastal setting which defines the conservation area when seen from the Cromarty Firth.

24. In accordance with HwLDP policy 49 'Coastal Development', proposals should not have an unacceptable impact on the natural, built or cultural heritage and amenity value of the area. The policy does not support development where proposals on the coastal side of a road would otherwise interrupt scenic views over open water. There is tension between the appeal proposal and the built and cultural heritage of Cromarty that I set out above. Furthermore the development of the appeal site would break scenic views over the site towards the Cromarty Firth. I conclude that the appeal proposal is contrary to HwLDP policy 49 'Coastal Development'.

Development within the settlement development area.

25. The site is not allocated in the development plan for housing but is not protected from future development by being designate as green space. HwLDP policy 34 'Settlement Development Areas' supports proposed development within such areas if they meet the requirements of policy 28 'Sustainable Design' and all other relevant policies of the plan. I have found that the proposal conflicts with HwLDP policies 28, 29, 49 and 57 and accordingly it does not draw comfort from its location within Cromarty settlement development. I conclude that the proposal does not accord with policy 34 of the HwLDP.

Other site specific matters

26. The proposal sees the retention of the specimen ash tree in the western part of the site and a new orchard would be planted in its eastern part. On that basis there would be no grounds to dismiss the appeal due to HwLDP policy 51 'Trees and Development'. There are no objections from the council's Transport Planning service and I conclude that the proposal does not conflict with policy 56 'Travel'. A planning condition could specify that the development does not take place below a specified ground level and have a minimum finished floor level, in accordance with the requirements of Scottish Environment Protection Agency, thereby addressing any risk of flooding. Scottish Water has not objected to the proposal and there is no tension between the appeal and HwLDP policies 65 and 66 'Waste' and 'Surface Water Treatment'. The proposal for three new houses is below the council's threshold of four and does not require to provide publicly accessible open space; there is no tension with HwLDP policy 75 'Open Space'. Finally the proposal would include enhanced access to the shoreline of the Cromarty Firth and therefore accords with and policy 77 'Public Access'.

Conclusions on compliance with the development plan.

27. Policy 57 of the HwLDP and its supplementary planning policy guidance is a key part in the determination of the appeal. I have identified the distinctive form and layout of the easternmost part of the conservation area around Miller Road and Causeway and, despite the current unmaintained appearance of the site, I nonetheless find that proposal would not preserve or enhance the conservation area. I judge that the three houses and ancillary building proposed to be constructed on the Daffodil Field would conflict with the council's policies that aim to safeguard the built and cultural heritage of Cromarty. They are not in keeping with the scale and character of the conservation area as required by the IMFLDP. Additionally I find the proposal is not in accordance with the HwLDP policies on sustainable

design, design quality and placemaking, development within the settlement development area and coastal development. Overall therefore, the proposal is contrary to the development plan.

Material Considerations

The council's informative note on Cromarty Conservation Area

28. In response to my procedure notice the council confirmed that there is no conservation area appraisal for Cromarty. An earlier informative note concludes that Cromarty is an historic village of "immense character and charm" derived from its mix of small cottages, town houses and commercial buildings. Its conservation area designation, nearly 50 years ago, reflects the quality of many of its individual buildings and their relationship to each other, and to the wider spaces in the town. To preserve and enhance the unique character of the town careful attention is needed to architectural detail. In my determination I have found that the informative note helpfully provides background to the conservation area designation and Cromarty's diverse architectural styles.

Scottish Planning Policy and the Historic Environment Policy for Scotland

29. Scottish Planning Policy (SPP) provides that the planning system is required to promote the care and protection of the designated historic environment. Change should be sensitively managed to avoid or minimise adverse impacts on the fabric, and setting, of an historic asset, and ensure that its special characteristics are protected, conserved or enhanced. SPP is clear on the setting of a listed building; 'setting' may be related to the function or use of a place, or how it was intended to fit into the landscape, the view from it or how it is seen from surrounding areas. Where planning permission is sought for development affecting a listed building, special regard must be given to the importance of preserving and enhancing its setting and any features of special architectural or historic interest. The layout, design, materials, scale, siting and use of any development which would affect its setting should be appropriate to the character and appearance of the building. I have summarised above my conclusions on the impact of the proposal on the eastern part of Cromarty Conservation Area. I conclude that my dismissal of the appeal is consistent with SPP.

30. 'Our Place in Time: The Historic Environment Strategy for Scotland' (2014) is the Scottish Government's strategy for the protection and promotion of the historic environment. The non-statutory Historic Environment Policy for Scotland (HEPS) (2019), and the Historic Environment Scotland Circular (2019), complement SPP and provide further policy direction. HEPS contains policies for managing the historic environment. I have identified how the proposal is inconsistent with the policies set out by HEPS for managing the historic environment. The positive attributes of this part of the conservation area have not been secured for present and future generations. Overall, the proposal's detrimental impact on the cultural heritage has not been satisfactorily minimised.

31. The 'Managing Change' series published by Historic Environment Scotland (HES) is non-statutory guidance to inform the determination of proposals that relate to the historic environment. The guidance on 'setting' discusses the way historic structures are understood, appreciated and experienced and recognises that the setting of an historic asset can incorporate a range of factors. It concludes that the setting of a listed building

can extend beyond the property boundary or 'curtilage' into a broader landscape context. Also important are the asset's aesthetic qualities and the prominence in views throughout the surrounding area.

32. I have described the impact that the proposal would have on the historic and cultural environment of Cromarty and the setting of adjacent listed buildings. My conclusions on the impact of the proposal on Cromarty Conservation Area are consistent with the policy framework provided by HES that I describe above.

Representations

33. From the many representations that have been received from parties opposing the proposal I note that the effect of the three houses on the built heritage of Cromarty is a very significant cause of concern. Cromarty and District Community Council point to what is termed "overwhelming" opposition expressed by residents on matters such as the environmental impact, road safety, coastal flooding, drainage and the future occupancy of the houses. Other representees point to the need for affordable housing in Cromarty and express concerns that the houses may be used for tourism accommodation or as second homes.

34. I have set out in paragraph 26 my conclusion that there is no tension between the proposal and its impact on trees, road safety, coastal flooding and drainage. In accordance with the HwLDP, the proposal for three houses is below the council's threshold of four new houses when affordable housing provision is required on allocated sites. Although the site is not allocated for residential development the council does not require a contribution for affordable housing if I had been minded to allow the appeal. The future occupancy of the houses is not a material planning consideration.

Overall conclusion

35. 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 that there are no material considerations which would still justify granting planning permission. I have had special regard to the duty imposed by section 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (1997 Act) and find that the proposal would not preserve or enhance the conservation area. Similarly under section 59(1) of the 1997 Act I conclude that the proposal does not preserve the settings of the two listed buildings that adjoin the site. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Chris Norman

Reporter