



Appeal Decision Notice

Decision by Tammy Swift-Adams, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2263
- Site address: land 60m NW of 12 Knock Shortie Road, Portmahomack, IV20 1RL
- Appeal by M T Austin against the decision by The Highland Council
- Application for planning permission 21/04972/FUL dated 20 October 2021 refused by notice dated 28 March 2022
- The development proposed: erection of three houses
- Application drawings listed in schedule at the end of this notice
- Date of site visit by Reporter: 26 May 2022

Date of appeal decision: 12 August 2022

Decision

I allow the appeal and grant planning permission subject to the six conditions listed at the end of the decision notice. Attention is drawn to the three advisory notes at the end of the notice.

Reasoning

1. On 24 June 2022 I issued the intentions notice which is attached at Annex A. This stated that I was minded to allow the appeal and grant planning permission for the above development, subject to various conditions and a planning obligation or some suitable alternative arrangement to secure developer contributions towards play park improvements and primary education. Those matters are set out in paragraph 20 of the intentions notice.
2. On 27 July 2022 I received confirmation from the planning authority that the developer contributions had been paid by the appellant, and that it was content for this decision notice to be issued. Accordingly, I am now in a position to allow the appeal.

Tammy Swift-Adams

Reporter

Conditions

1. Prior to the first occupation of the development hereby approved, the car parking and access arrangements detailed on approved site layout plan ref. 1196/22, Rev B shall be completed in full and made available for use. Thereafter, all car parking spaces shall be maintained for this use in perpetuity.

Reason: to ensure that an adequate level of access is timeously provided for the development; and in order to ensure that the level of off-street parking is adequate, in the interests of road safety and amenity.

2. Prior to the first occupation of the development hereby approved, the Knock Shortie play park shall be fenced and gated as detailed on approved site layout plan ref. 1196/22, Rev B. Thereafter, the fencing and gates shall be maintained and retained in perpetuity.

Reason: in the interests of safety and amenity.

3. No development or work (including site clearance) shall commence until a programme of work for the evaluation, preservation and recording of any archaeological and historic features affected by the proposed development/work, including a timetable for investigation, has been submitted to, and approved in writing by, the planning authority. The approved programme shall be implemented in accordance with the agreed timetable for investigation.

Reason: in order to protect the archaeological and historic interest of the site.

4. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the planning authority. Details of the scheme shall include:

- i. All earthworks and existing and finished ground levels in relation to an identified fixed datum point.
- ii. A plan showing existing landscaping features and vegetation to be retained.
- iii. The location and design, including materials, of any existing or proposed walls, fences and gates.
- iv. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities; and
- v. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works. Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of 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, or for whatever reason are removed or damaged, shall be replaced in the next planting season with others of the same size and species.

Reason: to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.

5. No development shall commence until a scheme for the maintenance, in perpetuity, of all on-site green spaces and/or woodland and/or sports facilities and/or play areas and/or other spaces, facilities, features or parts of the development that are not the exclusive property of any identifiable individual home owner (such as communal parking areas, the common entrances to flatted developments and estate lighting, and those elements of surface water drainage regimes not maintained either by the Council or Scottish Water), have been submitted to, and approved in writing by, the planning authority. Thereafter, the approved

scheme shall be implemented in full and in accordance with the timescales contained therein.

Reason: to ensure that all communal spaces, facilities and landscaping areas are properly managed and maintained.

6. The wheelie/kerbside recycling bin collection area shown on the approved plans shall be constructed prior to the first occupation of the development and thereafter maintained in perpetuity.

Reason: to ensure that suitable provision is made for the collection of communal waste and recycling bins.

Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

Schedule of Drawings

Drawing No. 3257-134, Rev C, Location Plan, dated 09 February 2004

Drawing No. 1196-22, Rev B, Site Layout Plan, dated 20 October 2021

Drawing No. 1196-21, Rev B, [Floor] Plans and Elevations, dated 07 June 2020

Drawing No. 3690:100, Drainage Layout Plan, dated September 2021

Planning and Environmental Appeals Division
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Annex A
Scottish Government
Riaghaltas na h-Alba
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Appeal: Notice of Intention

Notice of Intention by Tammy Swift-Adams, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2263
- Site address: land 60m NW of 12 Knock Shortie Road, Portmahomack, IV20 1RL
- Appeal by M T Austin against the decision by Highland Council
- Application 21/04972/FUL for planning permission dated 20 October 2021 refused by notice dated 29 March 2022
- The development proposed: erection of three houses
- Application drawings: listed in schedule at the end of this notice
- Date of site visit by Reporter: 26 May 2022

Date of notice: 24 June 2022

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the six conditions listed below, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or a suitable alternative arrangement, covering the matters listed in paragraph 20.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the appeal site includes the Highland Wide Local Development Plan, 2012 (“HWLDP”), the Inner Moray Firth Local Development Plan, 2015 (“IMFLDP”) and relevant supplementary guidance.
2. The appeal relates to a terrace of three houses proposed for a greenfield site in Portmahomack. The land at the appeal site rises from the west, where it borders the back gardens of terraced houses on Chapel Place, to the east, where it meets the gardens of detached houses on Gordon Brae. There is a play park to the south and fields to the north.
3. Having regard to the provisions of the development plan the main issues in this appeal are firstly whether the principle of building the proposed development in this location can be supported and, if so, whether its design, amenity and other impacts would be acceptable.

The principle of development

4. IMFLDP supports the organic growth of smaller settlements. Its Ross-shire growth area strategy includes the delivery of a flexible and dynamic housing market with development to support and strengthen small communities including Portmahomack. Policy 3 (other settlements) sets out assessment criteria for development proposals in such settlements. As described below, I find the appeal proposal would satisfy those criteria.

5. The appeal site is within active travel range of several community and commercial facilities, including a shop, café, public house, school and church and I consider the proposed houses would help sustain them. The site has access to the village centre via a network of footpath links, in addition to its main vehicular access via Knockshortie Road.
6. The proposed houses would sit between Gordon Brae, Knockshortie Road and Castle Wynd (in an area known as Knockshortie) and Chapel Place. The nearest part of Chapel Place consists of two-storey terraces in blocks of three or four houses, interspersed with pairs of bungalows. Many Knockshortie houses, including those adjacent to the appeal site and neighbouring play park, are detached houses of assorted sizes. There are also several pairs of semi-detached houses within the estate on Knockshortie Road and Carnegie Place. Third parties query whether the appeal site can accommodate three homes rather than the single house they say was anticipated. A plan submitted by the appellant in response to representations shows the site density and the footprint size of the proposed terrace would not be dissimilar to detached houses on Gordon Brae nor jar with the Castle Place terraces.
7. The proposal would make efficient use of existing space and I consider it a more efficient use of land than the single dwelling alternative preferred by some parties, with better potential to contribute to LDP housing objectives and support local services. There would be no net loss of amenity or recreation areas as the development would retain and contribute towards improving the adjacent play park. With the council historic environment team identifying the area as having archaeological deposit potential, an archaeology condition could be used to guard against impacts on any locally important heritage features.
8. For the above reasons (some of which I elaborate upon below), I find the proposed development would be appropriate in the context of adjacent streets and the wider settlement. It would add to the existing subtle variety of sizes and types of homes available, supporting social balance and local facilities without harming the character or amenity of the area. It is therefore supported by IMLDP Policy 3, and the principle of residential development in this location is established.

Design detail, siting and visual impact

9. The proposed houses are similar in design to the existing pair of semi-detached houses at 10A and 10B Knockshortie Road. They would have the addition of peaked roofs above the front doors, a feature used on existing semi-detached houses on nearby Carnegie Place. The houses would be finished in dry dash and have grey roof tiles, like many homes in Knockshortie and the wider area, and would step up the slope to work with the levels of the land.
10. Portmahomack conservation area, which includes the village centre and waterfront area but excludes the appeal site and surrounding homes, is mentioned in the planning authority report of handling. The potential for adverse impact on views from the conservation area is referenced amongst the submissions from third parties. During my site inspection I looked towards the appeal site from a number of points within the conservation area. It may prove just possible to glimpse the top of the proposed roofs from the area around the beach car park, but they will more likely be hidden by the existing homes and streets layered along the waterfront. Sitting lower into the hill than existing homes on the Knockshortie estate, the proposed houses would not transform the view, particularly compared to the adjacent 3 Gordon Brae, which has a commanding position and can be seen in its entirety. I conclude the proposed development would not harm the setting of the conservation area.

11. Adding to the relevant aspects of my assessment against IMFLDP Policy 3 (above), I find the proposed houses are appropriately designed and would be in keeping with the townscape. I find the proposal accords with relevant assessment criteria set out in HWLDP Policy 28 (sustainable design) which seeks sensitive siting and high-quality design in keeping with local character. I find it also accords with HWLDP Policy 29 (design quality and place making) provisions on local distinctiveness, design and layout and making development an integral part of the settlement. The planning authority points out that the slope of the site is not excessive. As such it is not safeguarded for the purpose of HWLDP Policy 30 (physical constraints), and its associated supplementary guidance, which guide prospective developers to demonstrate compatibility with specified physical constraints.

Amenity

12. There is enough separation between the proposed houses and their neighbours to give existing and future residents privacy. This is increased by existing garden spaces including the lawn at 3 Gordon Brae and the back gardens at Chapel Place. Though some are oriented towards the appeal site, the surrounding houses would not have their own outlook significantly transformed. 3 Gordon Brae, which looks out over much of the village to the Dornoch Firth and Sutherland beyond, would have foreground views over the roofs of the proposed houses. However, those roofs would be seen in the context of, and because of the different levels would not significantly intrude into, that wider vista. Existing residents would retain acceptable levels of residential amenity. Likewise, the appeal site is large enough to provide the proposed houses with sufficient outdoor space to allow their occupants an acceptable standard of amenity too. Landscaping details and arrangements for the upkeep of the communal areas could be managed through conditions.

13. I find that the proposed development would not have a significant detrimental impact on residents, meeting the relevant criterion of HWLDP Policy 28 which seeks to safeguard residential amenity.

Play park and services

14. The proposed houses would be served by a new private access road off Knockshortie Road which would pass the existing play park. The proposals include new bow-top fencing to safely enclose the play park, with a gate onto an extended section of pavement. A speed bump would help ensure vehicles enter the site slowly and a dropped kerb would assist access to the play park and pavement for footpath users approaching from within the proposed development and from the existing footpath link with Chapel Place.

15. Like several existing houses, the proposed houses would overlook the play park. Whilst some parties question the appropriateness of this, I find it would increase passive surveillance and better envelop the park within the wider estate. The play park would lose a small bit of land, at its corner with Knockshortie road, to accommodate the proposed bin store (see below). However, the report of handling indicates that, in addition to the safety features described above, the appellant has agreed to contribute to improving the play park, which is run-down and currently has limited equipment. I consider this a reasonable reciprocal arrangement.

16. Some parties raise concerns about the lack of lorry turning space and the proposed bin store. To avoid refuse lorries needing to use the private road, a bin store is proposed to be sited where it joins the public road. The report of handling says this is a commonplace arrangement in Highland, and that residents are only intended to place bins in the store on collection day. The store would be enclosed by a wall the same height as the wall of the

neighbouring garden. Some parties suggest this will create a blind spot, but I note the new fence and gate will stop people running straight out from the park and onto the road. I do not find that the bin store would have an unacceptable impact on amenity or safety.

17. The three houses would have two parking spaces each plus three visitor spaces. This exceeds policy requirements. Turning space is designed for private cars but the report of handling indicates it would also accommodate movements by most delivery vehicles. The number of vehicles needing to access the site is likely to be low. I consider the parking and access arrangements would be satisfactory and note the authority's transport planning team has no objection. Conditions could be used to ensure parking, access and bin store arrangements were in place before the houses were occupied.

18. Scottish Water has no objection in relation to water supply or waste water treatment capacity. A condition could be used to manage any surface water drainage arrangements not maintained by the council or Scottish Water.

19. All in all, I consider the proposed development would be appropriately serviced and, with the in-kind and financial contributions proposed, would have a positive impact on the facilities of the adjacent play park and would not have a negative impact on its safe use.

Developer contributions

20. Policy 31 (developer contributions) of the HWLDP lists items towards which developer contributions may be sought. In addition to the in-kind provision of a fence, speed bump and dropped kerb, which are designed into the proposal, the report of handling indicates the appellant has agreed to contribute towards education provision and improvements to the play park. It specifies a payment of £10,000. This includes £7,713 towards a one classroom extension at Tarbat Primary School (£2,571 per house) and £2,287 towards the upgrade of the play park. There is no indication the appellant objects to this.

21. The primary school payment is in line with the planning authority's Developer Contributions Supplementary Guidance, 2018 and appears appropriate in the context of the tests set out in Planning Circular 3/2012: Planning obligations and good neighbour agreements. Whilst the guidance suggests the Highland Council would ordinarily only require play area contributions from developments of four or more homes, the relationship between the proposed development and the existing play park (described in paragraphs 14 and 15) would justify a contribution to its improvement in this instance, particularly as a small section of play park land is to be used for a bin store to serve the proposed houses.

Other matters

22. The proposed development has attracted several objections, including from Tarbat Community Council. Most of the issues raised are covered in my reasoning above and some (such as fencing the play area, enclosing the bin store within a wall and increasing parking) have been addressed through changes to the proposals that were presented to the planning authority before their decision was taken.

23. Some parties, including the community council, have identified discrepancies between the development here proposed and the 1992 outline planning permission and design brief for the Knockshortie estate. Similarly, some parties refer to title deeds that they say replicate elements of the design brief and led them to think only one house would be built on the appeal site. These schemes are not before me and would not, in any case, provide

a valid reason to withhold a new grant of planning permission for a development found to be in accordance with the adopted development plan.

24. Some parties raised concerns about holiday letting, though others indicate this is not currently a significant issue in Portmahomack and that there are no holiday homes on the Knockshortie estate now. Using any house for short term holiday lettings can constitute a change of use, depending on the circumstances, and as such may require a separate planning application. This would be a matter for the planning authority should an issue arise.

25. Scottish Planning Policy (The Scottish Government, 2014) introduced a presumption in favour of development that contributes to sustainable development. As HWLDP and IMFLDP are over five years old, that presumption is a significant material consideration in the determination of this appeal. For the reasons set out in my reasoning above, I find that the proposal would contribute to sustainable development. I do not consider there to be any adverse impacts which would significantly and demonstrably outweigh its benefits.

Conclusion

26. For the reasons set out above, I conclude that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

27. I conclude that a planning obligation restricting or regulating the development or use of the land should be completed in order to secure developer contributions towards play park improvements and primary education. I will accordingly defer determination of this appeal for a period of up to 12 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12-week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

Tammy Swift-Adams

Reporter

Draft Conditions

1. Prior to the first occupation of the development hereby approved, the car parking and access arrangements detailed on approved site layout plan ref. 1196/22, Rev B shall be completed in full and made available for use. Thereafter, all car parking spaces shall be maintained for this use in perpetuity.

Reason: to ensure that an adequate level of access is timeously provided for the development; and in order to ensure that the level of off-street parking is adequate, in the interests of road safety and amenity.

2. Prior to the first occupation of the development hereby approved, the Knock Shortie play park shall be fenced and gated as detailed on approved site layout plan ref. 1196/22, Rev B. Thereafter, the fencing and gates shall be maintained and retained in perpetuity.

Reason: in the interests of safety and amenity.

3. No development or work (including site clearance) shall commence until a programme of work for the evaluation, preservation and recording of any archaeological and historic features affected by the proposed development/work, including a timetable for investigation, has been submitted to, and approved in writing by, the planning authority. The approved programme shall be implemented in accordance with the agreed timetable for investigation.

Reason: in order to protect the archaeological and historic interest of the site.

4. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the planning authority. Details of the scheme shall include:

- i. All earthworks and existing and finished ground levels in relation to an identified fixed datum point.
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- v. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works. Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the commencement of 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, or for whatever reason are removed or damaged, shall be replaced in the next planting season with others of the same size and species.

Reason: to ensure that a high standard of landscaping is achieved, appropriate to the location of the site.

5. No development shall commence until a scheme for the maintenance, in perpetuity, of all on-site green spaces and/or woodland and/or sports facilities and/or play areas and/or other spaces, facilities, features or parts of the development that are not the exclusive property of any identifiable individual home owner (such as communal parking areas, the common entrances to flatted developments and estate lighting, and those elements of surface water drainage regimes not maintained either by the Council or Scottish Water), have been submitted to, and approved in writing by, the planning authority. Thereafter, the approved scheme shall be implemented in full and in accordance with the timescales contained therein.

Reason: to ensure that all communal spaces, facilities and landscaping areas are properly managed and maintained.

6. The wheelie/kerbside recycling bin collection area shown on the approved plans shall be constructed prior to the first occupation of the development and thereafter maintained in perpetuity.

Reason: to ensure that suitable provision is made for the collection of communal waste and recycling bins.

Schedule of Drawings

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