

<b>Planning and Environmental Appeals Division Decision Notice</b>
<b>Appeal Reference</b>
DPEA PPA-110-2418
<b>Planning Reference</b>
APP/2020/2624
<b>Planning Proposal</b>
Full Planning Permission for Erection of Dwellinghouse
<b>Address</b>
Land at Hallyards, Portsoy, Banff, AB45 2UR
<b>Summary of Decision</b>
<p>The Reporter appointed to determine the appeal concluded as follows:</p> <ul style="list-style-type: none"><li>• Refuted the claimed brownfield nature of the land based on visual inspection as part of site visit and that anecdotal information was not sufficient in this regard.</li><li>• Insufficient case was made that the dwelling was essential and required in connection with an agricultural business.</li><li>• Notwithstanding principle of development, the dwelling itself deemed acceptable from a layout and design perspective.</li><li>• Had the appeal been allowed, a suspensive condition for provision of appropriate servicing and drainage would have been applied to address such outstanding matter.</li><li>• Proposed development does not accord overall with relevant provisions of development plan with no material considerations which would justify the granting of planning permission.</li></ul>
<b>The Reporter dismissed the appeal and refuses planning permission.</b>

**Policy Issues:**

None.

**Additional Points:**

None.

**Actions:**

Note Decision and reason why appeal was dismissed.

Planning and Environmental Appeals Division  
Appeal Decision Notice



T: 0300 244 6668  
E: dpea@gov.scot

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Decision by Christopher Warren, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2418
- Site address: Land at Hallyards, Portsoy, Banff, AB45 2UR
- Appeal by Gray Farms Ltd against the decision by Aberdeenshire Council
- Application for planning permission APP/2020/2624 dated 23 December 2020 refused by notice dated 22 June 2021
- The development proposed: Erection of dwellinghouse
- Date of site visit by Reporter: 10 November 2021

Date of appeal decision: 7 December 2021

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## Decision

I dismiss the appeal and refuse planning permission.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The adopted development plan is principally comprised of the Aberdeen City and Shire Strategic Development Plan 2020 (the SDP) and the Aberdeenshire Local Development Plan 2017 (the LDP). There are no strategic policy matters within the SDP which are of relevance to this proposal, and I have therefore confined my assessment to the provisions of the adopted LDP. Having regard to the provisions of the LDP the main issue in this appeal is the principle of locating the proposed house in the countryside.

2. LDP policy R2 'Housing and employment development elsewhere in the countryside' outlines the limited circumstances in which a small-scale proposal such as this may be supported. Amongst its provisions, policy R2 would, in principle, allow development which involves the remediation of redundant brownfield land. This is of direct relevance in this case because the appellant contends that the proposal would be on a brownfield site. Policy R2 also allows development which would meet any of the criteria set out in policy R1 'Special rural areas'. Policy R1 includes a criterion which allows accommodation within the immediate vicinity of a place of employment where an essential need for an on-site presence exists. This is of potential relevance to the appellant's case, which makes reference to the proposal's benefits to farming operations.

3. Turning firstly to the matter of whether or not the site is brownfield land, the appellant has suggested that the site has historically been used as a refuse tip and for the disposal of spoil. During my unaccompanied site inspection, I could see no indication that the site had previously been used in the manner suggested by the appellant. The ground levels are

broadly comparable to surrounding land, and the boggy conditions and unmanaged woodland and scrub beyond the clearing within the site provide a further indication that there has not been any meaningful use of the site for such purposes, at least for a significant period of time.

4. I cannot conclusively rule that the site has never been used in the manner described by the appellant, but I do not consider purely anecdotal information to be a sufficient basis upon which the principle of a new house on the site could be accepted. The appellant has intimated that development of the site would enable its remediation which would prevent further damage to watercourses and sub-soils, but there is no evidence before me to demonstrate that any such harm is occurring.

5. Even if there was some clearer evidence of tipping on the site historically, this would not necessarily mean that the site would be deemed to be brownfield land. This would be a judgement that would very much depend on the nature, extent and impact of such activity, potentially amongst other factors. Had a historical use of the site as a tip taken place to the extent that a material change of use of the land had occurred (and despite there being no planning history for the site) I would expect to be able to see at least some physical remnants of this, even with accounting for the passage of time and any subsequent natural regeneration of the land.

6. As it stands, I find there to be no substantive evidence to support the contention that this site should be considered as brownfield land. The proposal therefore fails to satisfy the corresponding criterion in policy R2.

7. The appellant has made general references to its wider agricultural operations and has indicated that this development would support the business as it would “resource and fund further farming operations”. Whilst I have no reason to doubt that any profits or income from the proposed development could be used in this way, this potential benefit is of a generic nature and it does not align with any of the exceptions to the general presumption against housing in the countryside as set out in LDP policies R1 and R2. No case has been made to suggest that there is an essential need for a house in this location in connection with the appellant’s agricultural operations.

8. All told, I find that the proposed development fails to meet any of the criteria in LDP policies R1 and R2 normally necessary for the principle of a house in a countryside location to be supported. There are no material considerations before me which would outweigh this policy conflict.

9. There is limited value in me assessing the more detailed aspects of the proposal as none of these would have a bearing on my conclusions on the overarching principle of development. I would simply therefore note that the proposed design and scale of the house would appear to be generally appropriate, and it would be unlikely to give rise to any significant landscape effects or loss of residential amenity at other dispersed properties in the locality. Whilst it is important to ensure that satisfactory drainage arrangements could be achieved, there is nothing before me to indicate that there are insurmountable constraints in this case. Had I been minded to allow the appeal, I consider that a suspensive condition could have been an appropriate means of addressing this matter. The access into the site would be from a straight section of road which offers ample visibility in both directions. Whilst it is a narrow road, the addition of a single house would

not give rise to an intensification of its use to the extent that this would be problematic.

10. Fundamentally however, the determinative issue in this case is a matter of policy principle relating to the proposed dwelling's countryside location. For the reasons set out above, I find 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 considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Christopher Warren*  
Reporter