

Appeal Decision Notice

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Decision by Dan Jackman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2068
- Site address: Land west of Inverness Retail and Business Park, Highlander Way, Inverness
- Appeal by Inverness Estates Limited against the decision by The Highland Council
- Application for planning permission in principle 10/02161/PIP dated 7 May 2010 refused by notice dated 25 October 2011
- The development proposed: Mixed use development including restaurants, drive through restaurants, a public house/restaurant and a motorist centre
- Date of hearing: 1 May 2012

Date of appeal decision: 31 May 2012

Decision

I dismiss the appeal and refuse planning permission in principle.

Reasoning

1. The proposal that is subject of this appeal is an application for planning permission in principle for a mixed use development including restaurants, drive through restaurants, public house/restaurant and a motorist centre. The appeal documents described the site layout plan, which showed footprints and specified gross floor area as, "*proposed/indicative.*"
2. It would appear that the appellant's current intention is to develop the site as shown on the site layout plan and in the transport assessment. Nonetheless, the planning permission would only be for this form of development if it were specified as such in any planning conditions.
3. The proposal is therefore potentially for a much broader range of uses and I consider that needs to be taken into account when assessing the appeal.
4. Based on the written information and discussion at the hearing session, I consider that the determining issues in this appeal are whether the proposal would have a detrimental impact on the city centre, the supply of business land and the long term



planning of the East Inverness expansion area, bearing in mind the provisions of the development plan, the emerging local development plan and Scottish Planning Policy.

Development plan matters

5. Section 25 of the Planning Act requires me to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. Since the council determined the planning application, the development plan has changed. I consider that in making my decision I should consider the provisions of the current development plan. There was no dispute that this now consists of the Highland wide Local Development Plan (adopted April 2012) and the Inverness Local Plan (adopted March 2006).

6. Although there was a dispute over the detailed interpretation of particular planning policies, it was agreed that for the mix of uses indicated, the relevant policy areas related to retail policies, business land policies and site specific/design policies.

Retail policies

7. There was a dispute as to whether Policy 40 of the Highland wide Local Development Plan applied to the proposal. The appellant argued that it did not because class 3 uses are not covered by retail policies.

8. My attention has not been drawn to any definition of retail uses. However, it is a clear objective of the Highland wide Local Development Plan to promote the role of the city centre. I note that this objective is consistent with the general thrust of retail policies set out in Scottish Planning Policy.

9. Unless defined by conditions, a mixed use development could include class 1 retail or class 11 leisure developments. It was made clear to me at the hearing that part of the rationale for the proposed class 3 uses was the close relationship with the retail and leisure uses in the existing retail park.

10. The proposed/illustrative site plan indicated a gross floor area in excess of 2,500 square metres. In my experience, 2,500 square metres is commonly used as a threshold for impact assessments, albeit, usually for class 1 or class 11 uses.

11. I consider that even if the planning permission was restricted to class 3 uses, it is reasonable to assume that the proposed scale has at least a risk of affecting the city centre. I therefore conclude it is appropriate to assess the proposal against Policy 40 of the Highland wide Local Development Plan.

12. I consider that the appeal site is in an out of centre location where criterion 3 of Policy 40 applies. There was no dispute between the parties that the sequential approach applies to class 3 uses. Whilst various sites were mentioned at the hearing, no sequential study has been submitted.

13. I accept that it is a possible scenario that there are no suitable alternative sites elsewhere for a mixed use development, including class 3 uses. Also, that as the class 3 uses have been promoted because of the close relationship with the other uses at the retail park (including commercial leisure), the appeal site may be appropriate. However, I have been provided with insufficient information to demonstrate this is the case at the moment.

14. In relation to sub criterion 3 ii, both parties assert either there would be an unacceptable impact on the city centre or that there obviously would be no such impact. Again, no study has been submitted to allow me to reach a conclusion one way or another.

15. I accept that the council did not request a study and bearing in mind the appellant's current intention for largely class 3 uses; a conventional retail impact assessment may not be the most appropriate form of assessment.

16. However, bearing in mind the broad nature of the uses proposed (i.e. mixed use development – unless otherwise restricted by conditions), I consider a more thorough assessment than simply comparing the number of restaurants is required.

17. In relation to sub criterion 3 iii, I accept that the overall retail and business park has a reasonable bus service. I do not consider that currently there is a good standard of active travel links. However, this is a matter that may be able to be addressed by conditions. I consider the matter of links in more detail when I consider the site specific and design related policies.

18. In relation to Policy 40, I consider that there is insufficient information to demonstrate that there are no suitable sequentially preferable sites or that there is an acceptable impact on the city centre or other centres.

Business land policies

19. At the hearing, the council argued that the proposal was contrary to Policy 41 as the site was part of the Inverness East safeguarding. I agree with the appellant, that to interpret the extent of the sites listed in Policy 41, it is necessary to look at the proposals map.

20. The relevant inset of the proposals map is map 6. Map 6 does not allocate the site for business use. It was explained to me at the hearing, that although the version before me, entitled, "...as intended to be adopted March 2012" showed the appeal site allocated for bulky goods retail, this was a drafting error. Both parties accepted the appeal site should have been left blank. Ultimately, the detailed allocations would be provided by the area local development plan, however, in the interim the Inverness Local Plan applies.

21. Policy 2.9 of the Inverness Local Plan allocates the site for business use. Although I can only attach limited weight to it, I note that the Main Issues Report of the Moray Firth Area Local Development Plan also shows the site for business use. I note that Scottish Planning Policy expects the development plan to ensure that there is a range and choice of suitable sites for business purposes.

22. It was therefore accepted by both parties (albeit for slightly different reasons), that the appeal proposal would be contrary to the relevant business land policies of the development plan. This would occur unless the mixed uses were restricted to business uses or other uses compatible with a business park.

23. On behalf of the appellant, it was argued that an exception could legitimately be made to the business land policies, mainly because the Inverness Local Plan was now out of date.

24. I found the evidence before me regarding business land supply to be contradictory. The appellant argued that the site had been actively marketed for 17 years but without success. More recently, alternative locations were being promoted and these locations benefited from various incentives. There was therefore no realistic prospect of the appeal site being developed as envisaged in Inverness Local Plan.

25. In their letter dated 17 June 2010, Highlands and Islands Enterprise described the appeal site as of “*regionally strategic significance.*” However, in their letter dated 9 February 2011 they accepted that speculative office development is an unlikely prospect and will remain so for a considerable time. At the hearing session, the Highlands and Islands Enterprise representative described the site as less important than it once was. However, on the question of over supply of business land, the representative suggested that it depended on the respective markets for different types of business land.

26. The council maintained that there was a demand and the site should continue to be safeguarded unless altered through the local development plan process. I also note that the reasoned justification for Policy 41 of the Highland wide Local Development Plan refers to a further study to be prepared by Highlands and Islands Enterprise.

27. There was no other information before me, for example, assessing alternative available sites, historic development rates of business land or an assessment of the nature of the business land market in Inverness. I accept that no useful purpose is served safeguarding a site when it can be demonstrated there is no realistic prospect of it being developed. I also accept that it is unrealistic to wait for the local development plan process if there is compelling evidence a site can better contribute to the local economy with alternative uses. However, I consider that I have insufficient information to demonstrate no wider economic harm would be caused by setting aside the current development plan land use allocation.

Site specific and design related policies

28. As explained in paragraph 20 above, map 6 gives the appeal site no specific land use allocations. Both parties therefore considered that Policy 11 was not directly relevant. Both parties considered that the general design Policies 28 and 29 were relevant and everyone agreed that connections between adjoining developments were very important.

29. Whilst I agree that Policy 11 does not specifically allocate a land use for the site, it is nonetheless important in providing the context for surrounding uses and the design objectives for the long term development of East Inverness.

30. I attach significant weight to the policies of the development plan aimed at securing good design and connections. I appreciate that much work has already been undertaken in setting a general framework for the long term expansion of East Inverness, all within the context of the development of the wider A96 corridor.

31. However, a lot of detail remains to be established. In my opinion, the development of the appeal site presents considerable design challenges to integrate with surrounding developments that were originally designed in isolation. This is made more difficult by the need also to integrate with other future developments that will no doubt come forward at different times and with different promoters.

32. It would be most unfortunate if short term design choices prejudiced the long term development of East Inverness. This would apply irrespective of the mix of uses proposed for the appeal site. Policies 28 and 29 are general policies and I accept many of the criteria are hard to apply to an application for planning permission in principle. Nonetheless, an important objective of the development plan is to make sure individual sites are developed in a way that secures a quality design for the overall expansion of East Inverness. I note that such an objective is consistent with the Scottish Government's, "*A Policy Statement for Scotland - designing places.*"

33. I consider that there was limited design information before me. The appeal documents described the layout plan as illustrative and only showed uses, building footprints and road layout. It did not show massing or provide any analysis as to how the proposal could create a sense of place or show how the proposal could integrate visually and functionally with existing and proposed development on adjoining land. I disagree with the appellant that the submitted information is adequate and that there would be no need for a master plan. I consider it is important that overall design principles be established in case the development commences over a longer period or takes a different form to that currently envisaged.

34. I consider that even at the planning permission in principle stage, there should be some basis for setting appropriate conditions and some comfort that such conditions are realistic and achievable. I was therefore concerned at the discussion at the hearing over linkages with Stoneyfield Business Park. Policy 11 of the Highland wide Local Development Plan promotes such a linkage.

35. Initially, the appellant agreed to a condition securing a linkage. Then there were second thoughts as to whether this was possible due to the burn, its bunds and land ownerships. Finally, I was assured that a solution could be found. This seemed to me to indicate that insufficient preliminary design work had been undertaken. I was surprised that the matter of pedestrian and cycling linkages with adjoining land had not been addressed more thoroughly in the transport assessment. It may have been that at the time it was

prepared, key decisions had yet to be taken regarding the campus site and the site for bulky goods retailing. However, now, the nature of these developments has been clarified.

36. I accept that there are strict limits as to how a relatively small site can contribute to the wider development, particularly regarding linkages that are bound to be off site. Normally, this can be addressed by a proportionate financial contribution. Indeed, it may well be the case, that because the appellant happens to have extensive land ownerships nearby, any contribution can be work in kind.

37. Nonetheless, a planning permission goes with the land and the overall design objectives of the development plan should be properly addressed. I consider that this is particularly important when the design matters are complicated and more so if a development is to be permitted in advance of the area local development plan.

38. I consider that insufficient information has been submitted to demonstrate that the necessary design objectives can be achieved or sufficient comfort given that such matters could otherwise be addressed through planning conditions.

Development plan conclusions

39. Overall, I consider that the proposal does not comply with the provisions of the development plan. The site is allocated for business use and I consider that insufficient information has been submitted to justify an exception. In addition, I consider that insufficient information has been submitted to demonstrate compliance with Policy 40 or the overall design objectives set out in Policies 11, 28 and 29.

40. In reaching this conclusion, I am not suggesting that a mixed use development can never be reconciled with the development plan. It is just that based on the information before me, I consider that risks remain that harm to the overall planning objectives of the development plan could occur.

Economic and infrastructure benefits

41. I accept that if the development went ahead as currently envisaged it would generate a significant number of jobs. This would have obvious economic benefits.

42. However, based on the information before me it is not possible to assess the overall economic impact. This is because I cannot be sure that there would be no adverse impact on the city centre or that the jobs could have been created on a sequentially preferable site. I also cannot be sure if there is an opportunity cost from the loss of potentially important business land.

43. There was no dispute that the proposed infrastructure improvements to the roundabout at the entrance to Tesco's would have a wider benefit for the long term expansion of East Inverness. However, I am not persuaded that this overrides all other considerations. I see no overall long term benefit if the improvement to the roundabout is achieved in the absence of other legitimate design objectives.

Conclusion

44. For the reasons set out above, I conclude that the appeal proposal does not comply with the policy and objectives of the development plan. Based on the information before me, I do not consider that there are any material considerations that are so compelling as to set aside the provisions of the development plan in this instance.

Dan Jackman

Reporter