

Directorate for Planning and Environmental Appeals

Appeal: Notice of Intention

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Notice of Intention by Richard Hickman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2093
- Site address: Viewhill, Balloch, Inverness
- Appeal by Inverness Properties Ltd against the decision by the Highland Council
- Application 11/04653/FUL for planning permission dated 20 December 2011 refused by notice dated 19 August 2013.
- The development proposed (in summary): Demolition of agricultural buildings to redevelop for 16 residential plots plus ancillary works including upgrading and extension of U2633 road, in accordance with submitted master plan
- Application drawings : see list on council's decision notice dated 19 August 2013
- Date of site visit by Reporter: 2 December 2013
- There is a claim for expenses which is covered in a separate decision notice

Date of notice: 24 December 2013

Notice of Intention

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

Description and background

1. The site is located in a rural setting to the south of Balloch, to the south of Culloden Wood. It comprises a large complex of agricultural buildings and associated hardstandings etc extending to 2.3ha. These are mainly large modern sheds, which were vacant and in a very poor state at the time of the site inspection. Road access is by means of a narrow cul-de-sac (Viewhill Road - U2633) leading west from the more important road leading south from Balloch to Culloden. There is a line of around a dozen detached houses along the north side of this cul-de-sac, extending to the farm complex, and several further houses immediately to the east on the opposite side of the main road.

2. The masterplan provides an indicative layout for the redevelopment of the site to form the house plots and ancillary parking etc. It also provides indicative building heights

ranging from one to 2.5 storeys, and details of proposed improvements to the access . The latter comprise reconstructing the full length of the existing cul-de-sac, together with an improved junction, pavement, and improved bus stop layby (northbound only) at the main road.

3. The reason given for the refusal of permission was : *It has not been demonstrated that the development will bring about an environmental benefit as required in order to qualify as an exception (under section 6.22 of the Housing in the Countryside Supplementary Guidance) to the general presumption in Policy 35 of the Highland wide LDP against new housing in hinterland areas.*

4. Policy 35 of the Highland-wide local development plan (Housing in the Countryside – Hinterland Areas) states a presumption against housing in the open countryside of the hinterlands around towns, subject to a number of exceptions. The sixth of these is (in summary) where *The proposal involves.... the redevelopment of derelict land; the development of “brownfield” sites will be supported where a return to a natural state is not readily achievable and where a wider environmental benefit can be achieved through development.* The policy goes on to state that where exceptions are justified, all proposals should still accord with the general policies of the plan and the Housing in the Countryside/Siting and Design Supplementary Guidance.

5. There were objections to the proposal from the Balloch Community Council and the National Trust for Scotland due to concerns about the effect of the new houses on the Culloden Battlefield area. There were also 9 representations from local residents expressing a variety of concerns including the effect on the battlefield; access and road safety issues; surface water drainage/flooding; loss of privacy and amenity; inappropriate development in a rural area; sewage arrangements; and various other matters of detail.

Reasoning

6. The determining issues in this appeal are thus whether the proposal would be in accordance with the development plan provisions cited in the reason for refusal and any other relevant development plan policies; and if so, whether other material considerations indicate a different outcome. The matters of concern to the community council, the National Trust for Scotland, and local residents relate largely to environmental matters so that they require to be considered as part of the assessment of the potential wider environmental benefit for the purpose of policy 35.

7. Paragraph 6.22 of the Housing in the Countryside Supplementary Guidance covers the inclusion of limited new build housing associated with the conversion and rehabilitation of redundant traditional (underlined in text) buildings. This policy would not apply to the current proposal which (with a very limited exception) is primarily a new build development to replace non-traditional farm buildings.

8. The only reason given by the council for refusing the application is the issue of whether the proposal would result in an environmental benefit, as provided for in policy 35, sixth bullet point, which refers to a wider environmental benefit resulting from the development (see paragraph 4 above). I accept the appellant’s submissions that the proposal would result in a number of benefits, of which I consider the most important to be

the removal of a large complex of redundant and partially derelict non-traditional agricultural buildings. I agree that there is no realistic prospect that the site could be cleared and restored for agricultural use, nor that these buildings will resume an agricultural use in the foreseeable future. Consequently, if no positive action is taken, I agree that the buildings would become progressively more rundown and unsafe, and that their removal would result in a major environmental benefit.

9. The council does not agree that there would be an environmental benefit because of the impact of the new houses on the battlefield site, the proposed density of the development, and the effect of additional vehicle movements on existing residents at Viewhill. The council contends that it would not be an acceptable expansion of the housing group as it would more than double the number of houses and extend the linear nature of the group.

10. The plans and cross sections contained in the appeal submissions show that the new houses would be largely contained within the footprint of the existing buildings, and would be significantly lower in overall height. I therefore agree with the appellant that the proposed redevelopment scheme would form a much less prominent feature in the landscape than the sheds, and would be better hidden in views from the south by the intervening ridge.

11. With regard to the impact on the Culloden battlefield area, the National Trust for Scotland is concerned that the proposal has the potential to affect the character of the battlefield conservation area by interrupting the open views and increasing the visual and physical intrusion of development into the battlefield site. The Balloch Community Council and others support this view. However Historic Scotland is content that the proposal would be unlikely to significantly increase the impact on the character of the battlefield area resulting from the existing buildings, and that the new proposal would not affect the integrity or significance of the battlefield.

12. As noted above, the houses would be well screened from the south by the intervening ridge, so that they would be scarcely visible (if at all) from the heart of the battlefield area and the location of the NTS visitor centre. I agree that the number and layout of the new houses would be appropriate to the setting, and would not affect the character of the battlefield area. I thus agree with Historic Scotland that it is unlikely that the proposal would have any impact on the character and ambience of the battlefield area. Redevelopment of the site would afford the opportunity for archaeological investigation, as provided for in the proposed planning conditions.

13. I can understand residents' concerns about a loss of residential amenity due to additional residential traffic using the Viewhill access road. I note that some of the houses are well screened from the roadway by walls and vegetation, but others are close to the road, where more passing traffic would be an unwelcome intrusion. Although unlikely, any re-use of the appeal site for farming activities or agricultural storage might well have some effect on residential amenity, as would a progressive deterioration of the buildings, especially for those living closest to the site. The access roadway would be upgraded to adoptable standards, with traffic calming and pedestrian/cyclist safety measures, while

achieving a rural character with soft edges and without conventional street lighting. I therefore consider that the new residential traffic and these arrangements would not cause an undue loss of amenity to existing residents.

14. On balance, I am satisfied that the environmental benefits of removing the unsightly derelict sheds at the appeal site, and reducing their visual impact on the landscape setting of the battlefield, would greatly outweigh any environmental disbenefits resulting from additional residential traffic on the access road. I therefore conclude that the proposal would, in principle, be a justifiable exception to policy 35 as provided for in the sixth bullet point of the policy.

15. Policy 35 also requires all exceptions to the policy to accord with the general policies of the plan, and with the supplementary guidance on housing in the countryside. In this respect, the council argues that the proposal would not be an acceptable expansion of the housing group as it would more than double the number of houses and extend the linear nature of the group, and that the density of the proposed development would be inappropriate as part of the appeal site is within the inventory site of the Culloden battlefield.

16. I agree with the appellant that the proposal would meet the criteria for the suitable extension of housing groups set out in the supplementary guidance, as it would form a limited and compact rounding off of the group, using brownfield land within a well defined boundary. The master plan and other details have been evolved to achieve a suitable design that is appropriate to the location, retaining an existing traditional building within the layout, and without having an adverse effect on trees and the landscape setting. The proposed density and height of the new houses would be compatible with maintaining the character of the battlefield.

17. In addition, I note that :

- The proposed road access, drainage, and surface water run-off arrangements are all acceptable to the responsible authorities. The development would be served by mains drainage and water supply. Surface water would be disposed of through an attenuation system that is acceptable to the council and not opposed by SEPA, based on a reduced run-off from surfaces amounting to around half of the existing roof area.
- Bats have been found to be using the buildings. Safeguarding arrangements would be put in place. The council officers' assessment of the matter, as explained in the committee report and taking account of the consultation reply from SNH, concludes that the 3 tests laid down in the habitats regulations would be met.
- The new houses would be reasonably conveniently placed for access to local services in Balloch, with an improved bus stop close by and a near-continuous pedestrian footway alongside the road.

18. Apart from the matters discussed above, the council has not identified any potential breaches of the development plan. The officers' committee report took account of all aspects of the development plan considered to be relevant, including the protected species, concluding that planning permission should be granted, subject to the listed conditions and a legal agreement to secure contributions to affordable housing and footpath/cycle

improvements. If the development is to be approved, the council wishes these matters to be put in place.

19. For these reasons, I find that the proposal would be in accordance with policy 35 and other relevant provisions of the local development plan, and that other matters that have been raised, including the potential effect on Culloden battlefield and on local residents and the presence of bats on the site, do not justify withholding permission. I conclude that planning permission should be granted, subject to the list of conditions set out in the committee report, but that a planning obligation should be put in place to secure the two matters identified in paragraph 8.24 of the committee report.

20. Accordingly I conclude that a planning obligation should be completed in order to secure contributions to affordable housing and footpath/cycle improvements, as specified in the committee report. I will therefore defer determination of this appeal for a period of 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 such other legal instrument 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.

21. Finally, I note the suggestion in one of the representations that a temporary access route should be formed for use during the construction period. I agree that, on the face of it, this would have considerable advantages, as it would avoid conflict with other vehicles and pedestrians using Viewhill Road; safeguard residential amenity from the disturbance caused by movements of construction traffic and machinery in close proximity to the houses; and would remove the risk of damage to Viewhill Road during the construction period. All this is particularly important because of the need to take down and presumably remove the existing sheds on the site. An alternative route for construction traffic is not before me for consideration, but, given that I am minded to approve this application, this is a matter that deserves careful consideration by the developer, in consultation with the council and other interested parties.

Richard Hickman

R M HICKMAN
Reporter

List of conditions and notes for applicant : see committee report

Directorate for Planning and Environmental Appeals

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Ms K Lyons»
Highland Council

Our ref: PPA-270-2093

10 January 2014

Dear Ms Lyons

PLANNING PERMISSION APPEAL: DEMOLITION OF AGRICULTURAL BUILDINGS, FORMATION OF 16 HOUSE PLOTS, UPGRADE OF ACCESS & ASSOCIATED WORKS; VIEWHILL, BALLOCH, INVERNESS

Please find attached a copy of the claim for award of expenses decision with regard to 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.

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

Yours sincerely

Liz Kerr

LIZ KERR
Case Officer
Directorate for Planning and Environmental Appeals

Decision by Richard Hickman, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2093
- Site address: Viewhill, Balloch, Inverness
- Claim for expenses by Inverness Properties Ltd against the Highland Council

Date of decision: 10 January 2014

Decision

I find that the council has acted in an unreasonable manner resulting in liability for expenses. Accordingly, in exercise of the powers delegated to me and conferred by section 265(9) as read with section 266(2) of the Town and Country Planning (Scotland) Act 1997, I find the council liable to the appellant in respect of the expenses of the appeal.

Normally parties are expected to agree expenses between themselves. However, if this is unsuccessful, I remit the account of expenses to the Auditor of the Court of Session to decide on an party/party basis. If requested, I shall make an order under section 265(9) read with section 266 of the Town and Country Planning (Scotland) Act 1997.

Reasoning

1. Awards of expenses do not follow the decision on the planning merits, and are made only where each of the following tests is met:

- The claim is made at the appropriate stage in the proceedings.
- The party against whom the claim is made has acted unreasonably.
- This unreasonable conduct has caused the party making the application unnecessary expense, either because it was unnecessary for the matter to come before the Scottish Ministers, or because of the way in which the party against whom the claim is made has conducted its side of the case.

2. The claim was made at the appropriate stage of the proceedings.

3. On behalf of the appellant, it is submitted that the council has acted unreasonably because :

(a) The reason for refusal refers to environmental benefit in the context of paragraph 6.22 of the supplementary guidance on housing in the countryside, but that paragraph does not mention environmental benefit. This is an incorrect cross-reference failing the test that reasons should be complete, precise, and relevant.

(b) Council officials have stated in the committee report that the proposed development would result in an environmental benefit. The council has not been able to demonstrate that there would not be such a benefit, as claimed in the reason for refusal. This reflects the failure of the council to properly consider the environmental benefits that would result from the proposal.

(c) The council has failed to recognise the merits of the proposal, and that it would comply with government and council planning policies on sustainable development and housing in the countryside (Highland Wide Local Development Plan policy 35).

4. In response, it is submitted for the council that :

(a) The council correctly applied the test contained in section 25 of the 1997 Act (compliance with the development plan). The applicant has not been misled by the incorrect reference in the reason for refusal as a comprehensive statement of appeal has been lodged.

(b) The planning committee is entitled to reach a different conclusion from the recommendation of the planning officials, and had reasonable grounds for doing so.

(c) The committee is well aware of government and development plan policies, and took account of them in reaching the decision to refuse the application.

5. With regard to the reasonableness of the original decision to refuse permission, I note that the committee report explained the positive and negative implications of the proposal; recognised that there was no right answer; but concluded on balance that the environmental benefits would outweigh the negative environmental effects. The committee was entitled to disagree with this conclusion, provided that there were sound planning reasons for doing so, but is obliged to give adequate reasons for the decision that is reached.

6. The reason given for the refusal of planning permission states that the proposal would breach policy 35 of the local development plan, and asserts that there would not be an environmental benefit. It does not explain why there would be a breach of the policy, nor why there would not be an environmental benefit. The council's appeal statement identifies the perceived negative impacts of the proposal, but does not acknowledge the benefits set out in the committee report, and thus does not give an explanation of why, in the committee's view, the positive aspects would be outweighed by the negative effects. The council contends that the committee took account of the various planning policies. However the appeal statement contains submissions about the extension of the housing group and other matters, such as the potential effects on the battlefield site and on residential amenity, which were not identified in the reason for refusal.

7. For all these reasons, I agree that the council did not give an adequate reason for refusal, and failed to give an adequate justification of the reason during the appeal proceedings. Given the full analysis of the implications of the proposal contained in the committee report, I find that the council acted unreasonably in failing to give clear and

complete reasons for refusal. This lack of clarity appears to have resulted in the council being unable to provide a convincing explanation of their position when it was challenged on appeal.

8. While I accept that the council's decision, like most planning decisions, requires an element of judgement on which reasonable people might reasonably differ, I find that on this occasion the failure to address the fundamental issue of the balance of advantages and disadvantages of the proposal, and the lack of satisfactory explanations of the adverse effects that the council perceives, amounts to unreasonable conduct. If the committee had given these matters more careful consideration, the application might have been approved; and if refused, a clearer reason for refusal might have been reached which could perhaps have been defended more successfully if challenged on appeal.

Richard Hickman

R M HICKMAN
Reporter