

Appeal Decision Notice

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Decision by Dannie Onn, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/270/2017
- Site address: Land at Cromarty Firth Industrial Park, Invergordon, IV18 0LE
- Appeal by Combined Power and Heat (Highlands) Ltd against the decision by the Highland Council
- Application for planning permission 08/00455/FULRC dated 9 May 2008 refused by notice dated 24 August 2009
- The development proposed is erection of a residual waste to energy combined heat and power plant with ancillary development
- Application drawings: location plans 5493/08/N/001; colour scheme plan 3506 A(04)201; landscaping plan DDUX0135; and proposed plans and elevations XXX/PXXX/00/0001, 0002, 0003, 0004, and 0005
- Date of site visit by Reporter: 19 March 2010

Date of appeal decision: 11 May 2010

Decision

I allow the appeal and grant planning permission subject to the 13 conditions which follow the reasoning below. Attention is drawn to the 3 advisory notes at the end of the notice.

Reasoning

1. The main issues in this appeal are the location of the proposed development and its impacts on the character and appearance of the area; on road safety; and on public health.

Location

2. The appeal site is at the Cromarty Firth Industrial Park, which is identified in the Ross and Cromarty East Local Plan for business and industrial uses with a requirement for mixed industrial uses and in the Highland Structure Plan as a strategic industrial and business development site. It lies on the outskirts of Invergordon in an industrial area and is shielded from the town centre by a ridge of land.
3. Policy W4 of the structure plan expects most types of waste arising in the Highland area to be disposed of within the Highland area in accordance with the proximity principle of the national waste plan. Policy W5 expects sites for waste facilities to be identified in the local plan. Suitable locations include industrial areas of appropriate character. Energy

from waste is supported by policy E7 of the structure plan subject to compatibility with existing land use (amongst other criteria). Policy W7 of that plan supports waste combustion with energy recovery: included in the specified criteria is a preference for sites within or adjoining general industrial areas. The structure plan includes (at figure 13) a map of the waste disposal network. This identifies a search area around the Black Isle for major recovery/disposal facilities.

4. Despite a structure plan requirement, the more recent local plan does not identify potential sites for energy from waste plants. However, policy GSP5 refers to the guidance within the Highland area waste plan. That plan envisages an energy from waste plant to serve the areas of Inverness, Nairn, Ross & Cromarty and Lochaber, but does not propose a location either.
5. Planning advice note PAN 63 contains national planning advice on waste management planning and includes industrial areas amongst potential locations for larger waste management developments. At paragraph 44, PAN 63 further advises that sites for energy from waste facilities should be sought only on land that is within permitted or allocated waste management sites or on other suitable previously developed land. It adds that general industrial sites may be also be suitable.
6. The appeal site is within an industrial area designated in the local plan for mixed uses. It is on the edge of Invergordon in a predominantly industrial quarter. The site is suitable for grid connection and is close to potential users of the energy generated. It would also be restricted to dealing with waste from the Highland area. The appeal site is an appropriate location in terms of national policy and would meet the council's own criteria for location of the proposed plant.

Character and appearance

7. The appeal site is close to Cromarty Firth in the Highland Region. The surrounding area is relatively open with a large sky. There are fine views across the Firth to the hillsides beyond. Pleasant countryside surrounds the immediate area of Invergordon. The town provides a gateway to the Highland region for cruise ships docking in the firth.
8. Invergordon is a small town ordered around a main street. With the exception of a tall church spire, the town centre is generally of low scale. Despite this, the wider views of the town are dominated by the port, a large area of storage tanks and other industrial buildings and structures. These include a distillery, a water storage tank, and a woodchip heat and power plant. Chimneys and their plumes are an existing feature of these wider views. Overall, the town appears to be industrial. At the time of my site inspection, there were also several oil-rig platforms anchored in the firth. These dominate the views and reinforce the town's industrial character and appearance.
9. The proposed plant would be housed in an industrial building measuring up to about 84m by 64m on plan and 25m in height with a substantial condenser building alongside. It would be clad in coloured steel panels. There would be a coated steel chimney rising to about 65m at a diameter of about 3.5m. This large development would be seen in the context of an extensive industrial estate in a relatively flat valley, although the ridge to the south would prevent it from dominating the smaller scale of the town centre. Materials and colour would be appropriate to the industrial area. Subject to a planning condition, landscaping would be incorporated as an integral part of the development. The impacts of

the proposed plant at a local level would be appropriate to its industrial setting and would accord with Planning Advice Note PAN 63, which includes advice on design.

10. The appellant has provided a landscape and visual impact assessment based on a standard assessment procedure. It is a useful exercise which allows the visual impact of the development to be considered in a reliable way. It demonstrates that the most significant visual effects would be within a distance of around 1km from the site and that these would be improved by landscape planting. Beyond that the impacts would be minor or moderate.

11. The proposed chimney would have the greatest impact in wider views. It would be a prominent feature. Despite this, it would have the backdrop of hills in views from the south and would be seen in the context of the existing town, including its industrial features. It would also be dominated in longer views by the oil rigs parked in the firth. I recognise that these are moveable structures which come and go in the firth and that this activity may cease in the future. However, I note that the Cromarty Firth is a safe deep-water harbour and is likely to continue to serve off-shore energy or other industry for at least the life-time of the proposed energy from waste plant. Invergordon provides an industrial setting and the proposed plant would not appear out of context in the wider views of the firth and surrounding countryside. The proposed development would accord with policy G2 of the structure plan and policy GSP1 of the local plan. There is no reason why this plant should detract from the attraction of Invergordon to cruise ships or the Highlands as a tourist destination in general.

Road Safety

12. The main road access to the site is via the A9, turning south onto the local road at Tomich. That route would avoid carrying bulk waste on local roads through the town. It is the easiest access to the appeal site and is likely to be the most used. A condition is also proposed to encourage traffic to use this route to avoid the town centre. The Tomich junction at the A9 has a staggered arrangement to allow traffic to flow when vehicles turn right onto the side roads. The right turn lanes are short and traffic may be held up when a number of vehicles queue to turn right. Nevertheless, the junction is at a long straight section of road, which allows anticipation of any queue ahead.

13. Neither Transport Scotland nor the local roads authority officers objected to the impact of the proposals on the existing road network. Transport Scotland considers that the increased traffic arising from the proposed development would not be sufficient to warrant improvements to the junction.

14. The council and others are concerned that the junction is sub-standard and dangerous. There has been an increase in recorded road accidents at the Tomich junction of the A9. This is a serious consideration. However, the figures remain relatively low and lost accidents are recorded as slight, with no fatalities. Although speeds are high along this stretch of road, drivers and others should be able to negotiate the junction safely. Significantly, I consider that the low percentage increase in the number of vehicles using the junction is unlikely, on its own, to make the roads any more dangerous. Thus the proposed development would not have an adverse impact on the local road network nor its ability to accommodate any increase in traffic volumes. It would accord with policy GSP16 of the local plan and policy W5 of the structure plan.

Health

15. The proposed plant would burn waste which has been previously sorted to remove recyclable and compostable materials. The residual waste would be fed into a special kiln designed to burn at a high temperature and destroy waste gas. Gas from the kiln would pass through a filtration system before exhaust. Ash from the kiln would need to be disposed of away from the site, although some metals would be recovered. The content of the exhaust and residual ash must depend on what is being burned, but there would be some pollutants leaving the plant.

16. There is much public concern and third party interest over the potentially harmful pollution arising from the proposed plant. There can be little doubt that burning of waste will produce pollution. Even a well-managed process will emit gases and particles to the atmosphere and produce toxic ash for disposal elsewhere. I note that burning is only proposed for waste which has had material removed for recycling and on the basis that useful energy will be produced. Nevertheless, energy-from-waste is only one step away from landfill in the waste hierarchy. It should not be seen as a long term solution in the move towards zero waste. For now, however, it is deemed necessary until communities learn to behave in a way which reduces waste to that which can be re-used or recycled.

17. The European Union Landfill Directive requires a reduction in biodegradable municipal waste going to landfill. The Scottish government has set targets for the reduction of waste to landfill. The Highland area waste plan indicates that an energy from waste plant is required from 2010 within the inner Moray Firth area. The proposed plant would be a significant contribution to the required waste management infrastructure in the Highland area. A proportion of incineration for energy capture is accepted in the national and Highland waste plans as the best practicable environmental option. That means that it is considered to provide the most benefits or least damage to the environment at an acceptable cost.

18. The industrial area is generally set apart from residential areas and other sensitive uses, including schools. The environmental statement indicates that even those people closest to the plant would not be at significant risk. The Scottish Environment Protection Agency (SEPA) is responsible for licensing the proposed plant under the Pollution Prevention and Control (Scotland) Regulations 2000 (PPC). SEPA has asked for further information throughout the application process and has withdrawn earlier objections to the proposed plant. PAN 63 advises that planning authorities should accept that PPC licensing (by SEPA) is adequate and suitable for public health protection from pollution. I note also that SEPA has the power to review PPC permits to reflect development in the best available techniques for pollution control. With these points in mind, I consider that any perceived risk to public health would not outweigh the plant's compliance with the development plan. Further, I have no grounds to conclude that there is any conflict with policy G8 of the structure plan.

Other matters

19. National Planning Framework 2 sets a 25% cap on treating municipal waste in energy from waste facilities. This is so that the process does not undermine the drive to reduce, re-use or recycle waste. Residual municipal waste would provide less than half of the waste to the proposed plant. There are no guidelines for the proportion of non-municipal waste sent to energy-from-waste plants. The area waste plan does not include a

best practice environmental option for non-municipal waste. However, significantly more commercial and industrial waste is currently being exported from the Highland area than would be required for this plant. Even if that waste were to be better managed, with an increasingly higher proportion being recycled or composted, it is likely that there would be sufficient for this plant for some time. This is recognised by SEPA in withdrawing their objection on the basis of need.

20. There is substantial public concern. Additional matters raised include that the proposed plant could discourage recycling because of its demand for waste. That should not happen, because waste would have to be pre-sorted, only residual waste would be burned. That would comply with the guidance of PAN 63. With conditions to secure the necessary controls, the plant should only continue to operate whilst sufficient residual waste is available. It would fill the gap until zero waste planning has a greater effect. The appellant has commissioned an Environmental Impact Assessment, which meets the requirement at policy W12 of the structure plan. This details how the plant will operate and how residual ash and other waste will be dealt with. These matters would also be covered by planning conditions.

21. The proposed development is for a residual waste, combined heat and power plant. It is permitted on the basis of supporting the diversion of municipal waste from landfill in accordance with local and national policy. Conditions will be required to ensure that waste entering the plant is controlled and that there is demand for the heat and power. Planning permission is a stage in the development of the site and would allow a developer to move forward with confidence. A license will be required from SEPA, supplies of waste and users for the energy will need to be secured. Some of these matters would be covered by planning conditions. Suggested conditions include:

- Construction and operation in accordance with the plans and mitigation within the Environmental Statement so that the plant will operate as applied for
- Restrict waste to non-hazardous from the Highland area as required by the proximity principle of the national waste plan
- Ensure only residual waste is burned so that re-use and recycling are not discouraged
- Operation in accordance with an approved plan for exporting heat and energy so that waste is not burned without benefit
- A scheme for the disposal of ash so that residual waste is safely treated.

22. Conditions are also suggested to deal with any existing contamination of the site; landscaping; water and drainage provision; a comprehensive travel plan; a transport plan; an environmental management plan; and noise control during the construction period. These conditions are necessary to ensure that the impacts of the development are acceptable. A condition to ensure foul drainage to the public sewer is not required as that is a matter for building regulations.

23. The council suggests that the duration of the permission (unless the development is begun before) should be 5 years rather than 3 so that a reasonable period is allowed for the large scale development to emerge. I acknowledge that there are technical matters to resolve before the development can commence and therefore I direct that a period of 5 years will be applied. A condition is attached to that effect.

24. The appellant offers a contribution to improvements at the A9 junction at Tomich. There is no evidence to suggest that this is necessary as a consequence of the proposed plant. Improvements may be desirable, but that is not sufficient in this case. An agreement is not necessary to the grant of planning permission. The offer would not overcome a fundamental objection and is of little weight in my assessment of this case.

25. Having taken into account these and all other matters raised, I conclude that they do not carry such weight as to overcome the development plan support for the proposed plant in this location.

This is a true and certified copy of the decision issued on 11 May 2010.

Dannie Onn
Reporter

Conditions

1. Unless begun beforehand, this permission lapses on the expiration of a period of 5 years beginning with the date of this decision. [*Reason: In accordance with section 58(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) and to allow sufficient time to realise the development*]
2. Except as otherwise provided for and amended by the terms of this permission, the development shall be constructed and operated in accordance with the provisions of the application, the submitted plans and the offered mitigation set out in the supporting environmental statement. [*Reason: to ensure that adverse impacts of the development are minimised*]
3. The development shall accept only non-hazardous waste which originates from within the Highland Council area. The operator of the waste to energy plant shall maintain a log of the nature and source address of all waste products entering the site and the date of arrival at the site. The log shall be made available to the planning authority on request. [*Reason: to ensure that the plant complies with the proximity principle and regional self-sufficiency in the management of waste*]
4. The plant shall not be operated until details of the steps to be taken to ensure the following have been submitted to and approved in writing by the planning authority:
 - that only residual waste (waste remaining when all reasonably practicable efforts have been made to extract recyclable and compostable material) is incinerated; and
 - that all commercial and industrial waste is pre-treated to an agreed standard.

The development shall operate only in accordance with the approved details. [*Reason: to retain effective control over waste being processed by thermal treatment*]

5. No development shall begin until a heat plan detailing the export of heat and energy from the plant has been submitted to and approved in writing by the planning authority. The plant shall be operated in accordance with the approved details unless otherwise

agreed in writing by the planning authority. [*Reason: to ensure that the plant delivers useable energy*]

6. No development shall begin until a scheme for recovery, recycling and final disposal of ash residues from the thermal process has been submitted to and approved in writing by the planning authority. Thereafter the development shall be operated only in accordance with the approved scheme unless otherwise agreed in writing with the planning authority. [*Reason: to ensure that ash residues are disposed of with the minimum impact on the environment*]
7. No construction work shall begin until any contamination of the site has been remediated in accordance with a scheme to deal with it, which has been first submitted to and approved in writing by the planning authority. That scheme shall include for a contaminated land risk assessment and, as required thereafter, a remedial strategy, submission of a validation report, and submission of monitoring statements. [*Reason: to ensure that the site is fit and safe for the proposed uses*]
8. No development shall begin until a scheme for the hard and soft landscaping of the site and a timetable for its implementation and maintenance have been submitted to and approved in writing by the planning authority. Thereafter, the scheme shall be carried out as approved. [*Reason: to secure an attractive environment and to protect adjoining land uses*]
9. The development shall only use water from the public water network or on-site grey water recycled within the plant complex. [*Reason: to safeguard the local water environment*]
10. No development shall begin until a comprehensive travel plan including a system for management, monitoring, review and reporting has been submitted to and approved in writing by the planning authority. Thereafter the development shall operate in accordance with that travel plan. [*Reason: to reduce dependence on the private car*]
11. No development shall begin until a transport plan to control traffic involved with the construction and operation of the plant has been submitted to and approved in writing by the planning authority. Thereafter, the development shall be carried out only in accordance with that plan. [*Reason: to protect road safety and minimise traffic impact on Invergordon*]
12. No development shall begin until a full site specific environmental management plan for the construction of the plant has been submitted to and approved in writing by the planning authority. Thereafter, the scheme shall be constructed only in accordance with that plan. [*Reason: to minimise pollution to the local environment*]
13. Noise from construction activities shall not exceed the following levels at the boundaries of residential property:
 - Monday to Friday 07:00 to 19:00 and Saturday 07:00 to 13:00 – 75dB LAeq (1hr)
 - Monday to Friday 19:00 to 22:00 and Saturday 13:00 to 22:00 – 65dB LAeq (1hr)
 - At all other times – no construction noise shall be audible
 [*Reason: to minimise construction impact on nearby residential properties*]

Advisory notes

1. Notice of initiation of development

Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

2. Notice of completion of development

As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.

3. Display of notice while development is carried out

A notice, in the form set out in Schedule 7 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 and completed in accordance with the notes to that Schedule, must be displayed in a prominent place at, or in the vicinity of, the site of the development while it is being carried out. The notice must be readily visible to the public, printed on durable material, and retained in place until the development is completed. This is required by section 27C of the 1997 Act (as amended).