

Directorate for Planning and Environmental Appeals

Appeal Decision Notice

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Decision by Gerry Farrington, a Reporter appointed by the Scottish Ministers

- Enforcement notice appeal reference: ENA-270-2007
- Site address: Land located at Wester Inshes, Inverness
- Appeal by R F More (Properties) Ltd against the enforcement notice dated 25 October 2013 served by The Highland Council
- The alleged breach of planning control: that the areas identified for landscaping, including the equipped play area, have not been formed, laid out, completed or maintained to the satisfaction of the planning authority contrary to condition 16 of planning permission reference 02/00668/FULIN granted on appeal on 11th March 2004 (PPA-270-251) as amended by planning permission reference 04/00403/FULIN dated 9th June 2004
- Ground of appeal: that the matters stated in the notice to involve a breach of planning control have not occurred [ground (b) as provided for in section 130(1) of the Town and Country Planning (Scotland) Act 1997 (the Act)]
- Date of site visit by Reporter: 15 January 2014

Date of appeal decision: 12 February 2014

Decision

I dismiss the appeal and direct that the enforcement notice dated 25 October 2013 be upheld subject to the variation of the period for compliance deleting the words “*is Friday 24 January 2014*” in paragraph 5 and replacing them with the words “*will expire at the end of a period of 66 days from the date of this decision unless in the meantime the planning authority agrees in writing to an extension to take account of planting seasons*”. Subject to any application to the Court of Session, the enforcement notice takes effect on the date of this decision, which constitutes the determination of the appeal for the purpose of Section 131(3) of the Act.

Reasoning

Background

1. The appeal site is located on land comprising part of the former Wester Inshes Farm. It encompasses the housing development at Cloverfield Road and Park, Meadowfield Park and Avenue, Hayfield Avenue and Inshes Mews.

2. In June 2004 the planning authority granted planning permission to R F More Properties Ltd for the construction of roads and services to serve a housing development incorporating 49 self-build house plots, 38 terraced houses and 28 semi-detached apartments, including open space and landscaping and the construction of a feeder road (reference no. 04/00403/FULIN). This application sought approval for a variation of the original planning permission reference no 02/00668/FULIN granted on appeal by Scottish Ministers in 2004. Following complaints by residents the planning authority investigated allegations that the open space and landscaping had not been completed and maintained as required by condition 16 of permission 02/00668/FULIN and began enforcement action culminating in the service of a breach of condition notice in August 2008.

3. The appellant responded to the notice by submitting a landscaping and landscaping maintenance specification scheme prepared by the Ross Partnership, landscape and forestry consultants, dated 15 November 2008. In September 2010 the planning authority served an enforcement notice alleging a breach of planning control identified in similar terms to the breach identified in the current enforcement notice. The appellant company appealed against the notice on grounds, which included ground (b) of section 130(1) of the Act (appeal reference ENA-270-2000). In a decision on behalf of the Scottish Ministers issued on 12 July 2011, after considering all the evidence the reporter concluded on the balance of probability that at the time that the notice was served the appellant had failed to comply with the requirements of condition 16 and he dismissed the appeal.

4. The previous enforcement notice remains in force. The council served the notice the subject of appeal to ensure that the considerations remain current and relevant.

The ground (b) appeal

5. The basis for the appellant's ground (b) appeal is that the areas identified for landscaping, including the equipped play area, have been formed, laid out, completed and maintained in accordance with the schedule prepared by the Ross Partnership in compliance with condition 16 as amended by permission 04/00403/FULIN. It cites various surveys, reports, e-mails and other documents in support of its argument. The planning authority asserts that the available evidence demonstrates that the landscaping has not been completed in accordance with the approved scheme, that the landscaping that has been undertaken has not been maintained as required by the maintenance schedule and that the play equipment has not been installed to its satisfaction. It draws on documentary and photographic evidence, including a plant count undertaken in December 2011.

6. Currently, the development plan for the area is the Highland-wide Local Development Plan (HWLDP) adopted in April 2012. HWLDP Policy 75 Open Space indicates that the council's long-term aim for open space provision includes the creation of sustainable networks of open space of high quality and open spaces that improve the quality of life of residents and visitors. The HWLDP replaces the Highland Structure Plan 2001 and the general policies of the Inverness Local Plan 2006 in operation at the time of the 2011 appeal but there have been no changes in policy that would justify a lower standard of open space provision than that which pertained at the time of the previous appeal decision.

7. The key issues in the current appeal are (1) whether any additional evidence has been adduced which would justify a different conclusion from that of the reporter in 2011 and if not (2) whether the appellant has demonstrated that the company has taken adequate steps since the previous enforcement appeal to comply with condition 16.

8. In addressing key issue (1), no significance may be attached to various progress reports from the landscaping contractor, Woodhouse Landscapes, which were taken into account in the previous appeal decision. No new evidence has been submitted to demonstrate that the development was compliant with condition 16 at the time of the previous appeal. Turning to key issue (2), I assess as follows whether the landscaping, the tree and shrub planting and the landscaping maintenance undertaken since the 2011 appeal decision have addressed the concerns identified in the reporter's decision.

9. The reporter remarked on the very poor state of the ground throughout the areas that had been sown with grass. Site preparation should have involved rotivation of all areas to be planted or sown with topsoil applied to specified depths. The soil should have been free from stones over 38mm in any dimension. To ensure a level surface, sown areas should have been raked or chain harrowed after sowing. While it appears from the documentary evidence that some remedial work has been undertaken, including the removal of stones, brick and glass and some re-sowing of the grass, it was evident from my inspection that the reporter's concern regarding the inadequate preparation of the ground remains unaddressed. Much of the ground remains very uneven and in places bare of topsoil.

10. A substantial amount of tree planting has taken place but much of it is out of conformity with the Ross Partnership scheme of tree planting shown on the approved drawing. Most of the silver birches in the scheme have been planted but not always in the correct locations. Of the other native and amenity trees in the scheme few, if any, of the Norway maples, cherry and rowan are evident. It seems that the appellant has sought to remedy the shortcomings of the implementation of the planting scheme by planting substantial numbers of alder trees, as well as lesser numbers of sycamore, larch and willow. These species were not included in the original approved planting schedule; and their use has not been approved in substitution for the authorised species. My site inspection confirmed that the poor condition of many of these trees reduces the value of the planting for the character and appearance of the area.

11. During the inspection my attention was drawn to much evidence that supports the council's and local residents' criticisms of the inadequate standard of tree planting and unsatisfactory maintenance of the open space areas. This included:

- (i) Frequent failure to provide the rubber tree-ties and spacers required by the approved specification.
- (ii) Inadequate space between stake and tree leading to abrasion and rubbing away of the bark;
- (iii) Several instances of cable ties embedded into the trunks of the trees;
- (iv) Strimmer damage to the base of the trunks.
- (v) Failure to provide a weeded space around the feathered standards.

- (vi) Widespread weed infestation and the generally unkempt appearance of the open space.

All in all, I saw little indication that the unsatisfactory standard of maintenance of the planted and sown areas has improved significantly since it was judged inadequate in 2011.

12. The appellant cites vandalism as a key factor that has thwarted the company's attempts to complete the scheme in accordance with the approved specification. However, the approved scheme requires the replacement of any trees and shrubs that die within two years of planting and no exemption is made for trees that have been vandalised. I accept that wilful damage of this nature can be a significant problem when establishing trees and shrub planting in housing layouts. However, it is reasonable to believe that had the trees been planted, staked and tied in the proper way and had the play equipment been more robust and vandal-proofed, the planting and play provision would have been much more resistant to interference. Furthermore, the appellant company has not supplied any evidence, such as police records, to substantiate that there have been significant incidents of vandalism or to show that there are unusually high levels of vandalism in the area. Even if this were the case, before considering what weight, if any, I should attach to this particular consideration, I would have expected evidence that acting as a responsible developer the appellant had sought the assistance of the police in combating the vandalism.

13. The comparisons made by the appellant of the landscaping undertaken on the appeal site with the landscaping of neighbouring areas of the Wester Inshes development, including a survey undertaken by Allied Surveyors Scotland in early 2012, have little if any relevance for the determination of the appeal. The emphasis on the quantity rather than the quality of the planting and open space provision on these adjacent developments is an unsatisfactory way to assess their actual amenity value and longer-term sustainability.

Conclusion

14. The appellant's evidence and the current condition of the landscaping fall well short of establishing on the balance of probability that the landscaping, tree and shrub planting and landscaping maintenance undertaken since July 2011 have addressed adequately the reporter's concerns identified in his reasoned appeal decision notice. I agree with the council and the residents that the failure to comply with condition 16 of planning permission 02/00668/FULIN as amended by planning permission 04/00403/FULIN is continuing to have a significantly adverse effect on the character and amenity of the area. Substandard open space is contrary to HWLDP Policy 75 aimed at achieving sustainability and improving the quality of life of residents and visitors; and the appellant has not identified any material considerations that would justify setting aside this key aspect of the development plan.

15. I conclude that the appeal under ground (b) should fail and that the notice should be upheld subject to a variation necessary to allow the period for compliance in paragraph 5 of the enforcement notice to commence from the date of the appeal decision and to take account of planting seasons.

G Farrington

Reporter

Directorate for Planning and Environmental Appeals

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Ms Mair»
Highland Council

Our ref: ENA-270-2007

12 February 2014

Dear Ms Mair

ENFORCEMENT NOTICE APPEAL: ALLEGED FAILURE TO FORM, LAY OUT, COMPLETE OR MAINTAIN EQUIPPED PLAY AREA TO PLANNING AUTHORITY'S SATISFACTION; LAND AT WESTER INSHES, INVERNESS

Please find attached a copy of the decision on 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

Christopher Kennedy

CHRISTOPHER KENNEDY
Case Officer
Directorate for Planning and Environmental Appeals