

Directorate for Planning and Environmental Appeals

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Our ref: PPA-270-2097

5 September 2014

Dear Sir/Madam

PLANNING PERMISSION APPEAL: LAND AT CAWDOR ROAD, NAIRN

Please find attached a copy of the decision on this appeal and the claim for award of expenses decision(s).

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
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Appeal Decision Notice

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Decision by Iain Urquhart, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2097
- Site address: Land at Cawdor Road, Nairn, IV12 5LU
- Appeal by Scotia Homes Ltd, Barratt North East Scotland and Robertson Homes against the decision by The Highland Council
- Application for planning permission 11/04355/FUL dated 25 November 2011 refused by notice dated 18 September 2013
- The development proposed: Residential development consisting of 319 units (232 houses and 87 flats) and associated infrastructure and public open space
- Dates of Hearing sessions: 9 to 11 June 2014

Date of appeal decision: 5 September 2014

Decision

I dismiss the appeal and refuse planning permission.

Preliminary Matters

1. Representations submitted on behalf of Charles Allenby argue that the appellants did not comply with the statutory requirements for pre-application consultation (PAC). The original planning application should not have been determined by the council and the appeal purporting to be made against the council's refusal of the application is a nullity. It is argued that the site shown on a plan forming part of the pre-application consultation process differs from the site subject of the planning application submitted to the council and now subject of this appeal. The representations submit that the difference of around 6.75 hectares is significant and the appellants have consulted on a residential development of around 320 units on a very much greater land area than that for which they have applied for planning permission. Consequently, it is argued that the planning application was contrary to Section 35B(4)(c) of the Town and Country Planning (Scotland) Act 1997 and so, under Section 39(1A) of the Act, the planning authority must decline to determine the application.

2. The planning application site boundary differed from that shown accompanying the Proposal of Application Notice (PAN) lodged with the council. The site boundary was drawn in along its northern and southern edges. Circular 3/2013: Development Management Procedures states in paragraph 2.13 that 'While there is scope for proposals to alter between PAC and an application being submitted, any subsequent application

needs to be recognisably linked to what was described in the proposal of application notice.’ Although the site area was reduced, I find that the site location, shape, land use proposals and development description details contained in the planning application were very similar to those contained in the PAN which was the subject of community consultation. I consider that it would have been quite clear to the local community and other parties that the site and the planning application proposals were very similar to those presented during the PAC process despite the site area being smaller. I do not find that the interests of any parties would have been prejudiced by the changed site area.

3. I find the site subject of the planning application and appeal was sufficiently linked to the site and proposals contained in the PAN that the planning application was competent. The council was entitled to accept and determine it. Therefore, I do not uphold the arguments put forward on behalf of Mr Allenby and I find the appeal is valid.

Reasoning

4. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The relevant development plans covering the appeal site are the Highland Wide Local Development Plan 2012 (HwLDP) and, in so far as it remains in force, the Nairnshire Local Plan. HwLDP Policy 18: Nairn South sets out a number of requirements for development of the Nairn South area including the appeal site. These development plan provisions have been supplemented by more detailed requirements contained in the council’s non-statutory supplementary guidance titled Strategic Masterplan – Phases 1 & 2, Nairn South.

5. Having regard to the provisions of the development plan the main issues in this appeal are:

- whether the proposed residential development meets the requirements of Policy 18: Nairn South in the local development plan (HwLDP) in relation to land use allocation and phasing;
- the impact of the proposed development on the local road network and whether the proposal meets the transport requirements set down in Policy 18: Nairn South and any supplementary transport requirements contained in the council’s Strategic Masterplan and,
- whether the proposal meets design and the other requirements of local development plan (HwLDP) Policy 18.

Policy 18: Land use allocation and phasing

6. The local development plan (HwLDP) requires the release of land for residential development at Nairn South to meet housing land supply requirements in the Nairn Housing Market Area. The appeal site forms part, but not all, of the first phase of the Nairn South allocation. It forms the major part of Phases 1 and 2 of the release area although land to the north-west of the site (phases 1B and 2B) lies outwith the appeal site boundary, as do future development phases.

7. The entire Nairn South allocation has a capacity of 600 units with 330 units allocated for the 10 year period 2011 to 2021. The plan states that this release will assist in providing choice and stimulate the housing market in the Nairn area. Plan Policy 18: Nairn South states that the council will support the allocation of land at Nairn South for mixed-use development and the principal use will be residential.

8. Several representations point to the absence of other uses in the appeal proposal and argue that, as a result, the proposal is contrary to the Policy 18 requirement for a mixed use development. The appeal site forms part of the wider release area to which this policy requirement applies. In addition, the plan introduction to Policy 18 (HwLDP paragraph 14.12.2) states that Phase 1 will be mainly residential but with localised employment opportunities as part of a mixed uses masterplan for the area. The appellants have lodged an indicative plan (L7.0) showing office and other uses on land that lies beyond the appeal site boundary. I cannot consider such proposals as part of this appeal. Similarly, I do not consider that the land reserved for sawmill expansion to the north of the appeal site forms any part of the requirement for mixed uses within Phase 1 of Nairn South. This reservation reflects the earlier allocation in the Nairnshire Local Plan (2000).

9. Therefore, on this basis, I consider that any Phase 1 development should include other employment uses as well as residential use if it is to comply with Policy 18. The appeal proposals fail to meet this requirement. The appellants have not cited any relevant planning reasons to justify the omission of employment or business related uses and there does not appear to be any mitigating solution in place to re-provision this requirement as part of an agreed masterplan for the wider Nairn South release area.

10. Policy 18 (Phasing sub-section) states that the limit to development of the first phase of Nairn South is to be determined by a masterplanning exercise. A limit of 250 houses is set for the residential component of the first phase in advance of a masterplan being prepared and subject to other Policy 18 requirements being met, including a transport appraisal. Since adoption of the plan the council has approved a Strategic Masterplan for Phases 1 and 2, Nairn South and the appellants have submitted transport assessments to support their detailed proposals.

11. Representations on behalf of Mr Allenby and the Community Councils note a difference between the wording and punctuation of the adopted plan (HwLDP) and the LDP Examination Reporters' recommended modifications in relation to the Phasing sub-section of Policy 18. Consequently, they suggest that a limit of 250 houses for the first phase should remain. However, this is not an issue to be considered as part of this appeal. If any party was aggrieved by the council's actions and the content of the adopted plan then they could have sought a separate legal remedy. I am bound to assess the appeal proposals against the policies contained in the adopted local development plan. In principle, I am content that the proposal for 319 residential units would meet the requirements of Policy 18 in relation to phasing, subject to transport infrastructure requirements being met. I now consider these transport matters in paragraphs below.

The impact of the proposed development on the local road network

12. HwLDP Policy 18 states that commencement of the first phase of Nairn South will be subject to a number of transport requirements. Separately, any development of the scale proposed would require a prospective developer to demonstrate that the impact of the development on the surrounding road network would be acceptable. Given this background, the appellants prepared a Transport Assessment (TA) (February 2011) to accompany the original planning application to the council. In addition, they submitted a Sensitivity Test report in September 2013 and a Transport Technical Note in April 2014 to support their case that the proposal meets the requirements of Policy 18 and that the surrounding road network could safely accommodate traffic generated by the proposal subject to implementation of a number of traffic management measures and physical improvements.

13. I consider that the transport assessment documents and the related evidence presented at the Hearing raise three important and inter-related issues, namely:

- whether the transport assessment input data and assumptions that underpin the appellants' predicted traffic flows are robust and properly based;
- whether the local road network, particularly along Cawdor Road and at its junction with Balblair Road, can absorb the projected traffic generated by the development without prejudicing the safety of road users, and
- whether the proposal meets the transport requirements set out in Policy 18 and any supplementary transport and phasing requirements in the Strategic Masterplan.

Input data and assumptions

14. At the Hearing the appellants made it clear that their transport case is founded on their original 2011 Transport Assessment and they rely on predicted 2016 traffic volumes and distribution arrangements set out in this assessment. The traffic figures are derived from a number of data inputs including census data, traffic survey information and projections on traffic growth, trip generation, traffic assignment and junction saturation levels. The appellants state that whilst they have tested various alternative data inputs and assumptions in their 2013 and 2014 transport documents, these reports were submitted for illustrative and comparative purposes. They do not replace the analysis and conclusions contained in their original 2011 Transport Assessment which demonstrates the adequacy of the road network to accommodate the proposed development. However, concerns have been raised by the council and other parties about the reliability of some of the input data in the 2011 assessment. I address the key concerns in the following paragraphs.

15. The original Transport Assessment used traffic flow data obtained from traffic surveys carried out in January 2011 to show observed (am) and (pm) peaks on roads and junctions around the appeal site. However, the Sensitivity Test report (2013) shows that the average Annual Average Weekday Traffic (AAWT) flows for 2011 neutral months would have been 11.3% higher than the recorded levels in January 2011. The traffic flow data is derived from automatic traffic counts across neutral months in 2011, although the Cawdor Road junction was not surveyed in January 2011.

16. The appellants' Transport Technical Note (2013) relied on a new traffic survey carried out in March 2014, a non-neutral month. It was noted at the Hearing that (am) and (pm) peak flows for the Cawdor Road / Balblair Road junction in this new survey were 11% and 18% lower than a Transport Scotland survey of the same junction in September 2010, a neutral month. These lower March 2014 figures may not be typical of the year-round position

17. The varying survey data and results demonstrate the difficulty in establishing an agreed starting point for the transport assessment. However, on balance, I consider that the base traffic levels quoted in the 2013 Sensitivity Report would have been a more reliable starting point. This report uses annual average flows based on automatic traffic counts and does not rely solely on surveys from a low month, January, quoted in the original Transport Assessment.

18. I also have concerns that traffic growth assumptions used by the appellants may have underestimated the overall traffic position on completion of the proposed development. The original Transport Assessment (2011) applied high traffic growth figures to 2016 which was the estimated site completion date. The subsequent Sensitivity Test (2013) and Transport Technical Note (2014) adopted a similar approach. However, the prospective development timetable for the appeal site has changed. At the Hearing it was agreed that, if planning permission were to be granted, the likely development timetable for the site would see first house completions in early to mid 2016 with final completions in 2020/2021. On that basis, I consider that it would have been more logical for projected traffic levels to have incorporated traffic growth for an additional 5 years to final completion in 2021. This approach would accord with Transport Scotland advice set out in Transport Assessment Guidance (2012) (paragraph 5.58) and similar Department of Transport advice. Based on recent growth rates and future projections, I find that it would have been prudent to allow for between 1% and 2% annual growth in traffic levels to 2021.

19. The 2011 Transport Assessment used trip generation figures from a Trip Rate Information Computer System (TRICS) database of comparable locations together with 2001 Census 'Journey to Work and Education' information for the Nairn Cawdor Ward to establish trip rates and modal split percentages. As a result, the 2011 Assessment calculated potential traffic numbers using peak vehicle trip rates of 0.22 (am) and 0.31 (pm) combined with 2001 Census information that 41.2% of person trips were undertaken by car drivers.

20. Person trip rates, as opposed to vehicle rates, have been used in the more recent 2014 Technical Update report. Whilst this 2014 report used the latest TRICS database, it employed slightly different locational criteria from those used in the original 2011 Transport Assessment and the 2013 Sensitivity Test. In particular, only 'edge of town' locations were considered in the 2014 report rather than both 'edge of town' and 'suburban' locations used in the 2011 and 2013 reports. Nairn is a relatively small town and, in this context, the location of the proposal could be described equally as 'edge of town' or 'suburban'. I am not persuaded that the choice of 12 'edge of town' site comparators in the TRICS assessment, including 4 sites in Eire and Northern Ireland, is sufficient or appropriate for comparison purposes. I prefer the wider locational sieve used by the appellants in their

2013 Sensitivity Test (Appendix B) which is based on TRICs outputs from 11 'suburban' and 'edge of town' locations in England (outside London and the South-East) and 2 in Scotland (Dunfermline and Stirling). It appears to me that these locations would provide a better locational and socio-economic match and so I find that it would be more appropriate to use the higher TRICS trip rates found in the Sensitivity Test than to use those contained in the original 2011 Transport Assessment.

21. Similarly, I consider the appropriate car driver modal share figure to be used in trip generation calculations should reflect more recent data from the 2011 Census. The proportion of people in the 4 to 74 age group who are studying, or are in employment, and who travel by car is shown as 62% in this Census. A similar proportion (66%) is shown for a slightly different cohort, the 16 to 74 age group who are in employment or studying and drive to work. Both these figures are significantly higher than the 41.2% used in the original 2011 Transport Assessment and the 50% figure used in the later 2014 Technical Note.

22. I consider that both trip rate and modal share levels used in the Assessment are likely to have understated the position. It would have been more appropriate to have used higher trip rates in combination with higher car modal share levels and this would have led to higher traffic generation figures for the proposed development.

23. The appellants have modelled the operation of the proposed signalised junction at Cawdor Road / Balblair Road using an industry standard LinSig programme. This is the most critical junction in the local network and it would bear almost all additional traffic generated by the development. Community representatives highlighted a number of factors which may reduce both vehicle flow rates and junction capacity calculations set out in the LinSig analysis in the 2011 Transport Assessment. This includes surface drainage problems, road gradients, narrow footways and high pedestrian flows on the eastern side of the carriageway, downstream congestion and the presence of cyclists on the road at peak times. I have not found it possible to quantify the effect, if any, of these specific factors on the LinSig outputs.

24. The LinSig analysis (2011 Transport Assessment) shows 3.0 metre wide lanes on Cawdor Road whereas later drawings, including SK 101 (Rev C), show lane widths of 2.9 metres north of the railway bridge. This is a 9% reduction in lane width which has not been reflected in the analysis. The carriageway width on Cawdor Road also reduces to between 5.0 metres and 5.6 metres south of the railway bridge towards Elizabeth Street.

25. The LinSig model has used the full width of the carriageway up to the face of retaining walls on the western edge of the carriageway in its calculations. I accept the council's view that the full carriageway width is not used by vehicle drivers. Drivers stay clear of a fixed barrier, such as a wall, at the edge of a carriageway and there should be an offset allowance of 0.45 metres to reflect the wall's presence. It was clear from my site inspection that the wear and colouring on the carriageway support the council's position that the effective or usable width of the road is narrower than its full width. Therefore, these two factors relating to road width could lead to over-optimistic predictions of traffic lane saturation flows and underestimates of the level of road capacity used.

26. It appears to me that the projected capacity values for this junction of 86.5% (am peak) and 80.4% (pm peak) stated in the Sensitivity Test (Table 1-1) are more likely to be representative of the appellants' proposals. I believe that these figures more accurately reflect the future position as they are founded on realistic base traffic levels, more appropriate trip rates and a 90 second traffic light cycle time which would afford better pedestrian movement. However, at these levels the junction would be very close to its effective capacity of 90% and there would be very little allowance for modelling error or variation. Importantly, these capacity values do not fully reflect my concerns about input data and traffic saturation levels. If they were to do so, then it is likely that the effective junction capacity would be exceeded.

27. I do not accept that, whatever combination of input data is used from the appellants' 3 transport reports, the road network including the Cawdor Road / Balblair Road junction can be shown to cater for the projected traffic generated by the proposal. It would not be safe to arrive at this conclusion in light of the concerns raised above which are not fully addressed in any of the 3 transport reports submitted by the appellants.

28. In summary, I find that the appellants' 2011 Transport Assessment, upon which they rely, understates the likely traffic flows to be generated by the development by failing to incorporate:

- appropriate base traffic levels for the local road network typical of the year-round position;
- additional traffic growth to reflect their proposed development timetable ;
- higher trip rate levels to better reflect the up to date TRICS database model and comparable locations and,
- higher car driver mode share proportions in line with 2011 Census figures for Nairn.

29. In addition, I do not consider that the appellants' modelling exercise fully reflects the constraints along the Cawdor Road approaches to the railway underpass and the junction with Balblair Road. As a result, the appellants' analysis of the junction's ability to accept traffic generated by the development is likely to have overestimated the available capacity. The traffic levels upon which this analysis has been carried out do not reflect the 4 deficiencies I have noted above.

30. Overall, I do not consider that the likely traffic position on completion of the development has been properly captured by the appellants' original Transport Assessment and it cannot be relied upon to present sufficiently accurate or robust predictions of traffic flows for the local road network. I believe that the cumulative effect of the Assessment's deficiencies is likely to have resulted in an underestimate of future traffic flows on the local network including at the critical Cawdor Road / Balblair Road junction.

The local road network and its ability to absorb the projected traffic generated by the development without prejudicing the safety of road users

31. The development's potential impact on junctions onto the A96 (T) road is acceptable to Transport Scotland without the need for any mitigating measures. It is clear from all the

appeal submissions that the most critical part of the local road network is the section on Cawdor Road from its junction with Elizabeth Street in the south, passing under the railway bridge, to its junction with Millbank Crescent, Westbury Road and Cawdor Street in the north. This also includes the area around the Balblair Road / Cawdor Road (B9091/B9090) junction. The HwLDP has already identified improvement issues in this same area. The transport requirements listed under Policy 18 state that current pinch points at the railway bridge must form part of a solution to open up development in phase 1. The need for improvements to the B9091/B9090 junction is also identified.

32. The appellants propose to introduce traffic light controls at the railway bridge and the junction of Cawdor Road and Balblair Road. This would be an improvement on the current give-way arrangements and it would better regulate the flow of traffic particularly at peak times. The issue of restricted driver visibility at the junction would also be resolved by the introduction of traffic lights.

33. This part of Cawdor Road is characterised by both substandard roadway and footway widths. Cawdor Road varies in width but is only 6.0 metres at its widest point. I have already noted that the effective or usable width of the road is narrower than its full width. There is a single footway on the east side of the carriageway. This footway is only 1.5 metres wide for most of its length between Millbank Crescent and Elizabeth Street. It narrows in part to 1.4 metres south of the railway bridge. It would be the primary route for all pedestrian traffic emerging from the appeal site heading towards local schools, railway and bus stations and town centre facilities. There is no footway on the west side of Cawdor Road. It is evident that the existing footways to the north and south of the railway bridge are already substandard by some margin and fail to meet current council guidelines for new developments that specify a minimum width of 2.0 metres.

34. Despite these inadequacies, the appellants do not propose to increase the width of the existing footway along Cawdor Road except for a limited area under the railway bridge. A small section of footway to improve access to the station is also proposed together with a push button activated pedestrian crossing as part of a new traffic light controlled junction at Cawdor Road / Balblair Road. In addition, a footway build-out is proposed on the west side of Cawdor Road close to Westbury Road to facilitate pedestrians crossing towards Millbank Crescent and local primary and nursery schools.

35. During my accompanied site inspection in the morning peak period I witnessed a range of vehicle types, including HGV, PSV and agricultural vehicles, and a number of cyclists travelling on Cawdor Road. The adjacent footway was also well used by pedestrians who included accompanied and unaccompanied children, some in pushchairs, walking to primary and nursery schools on Millbank Crescent. It was evident that sometimes vehicles travel close to the kerb due to restricted road width and the presence of retaining walls to the west. Pedestrian safety and amenity could be prejudiced particularly if larger vehicles were to be close to, or overhang, the footway when passing other vehicles. I note that there has been one recorded incident in the vicinity where a vehicle's wing mirror has struck a pedestrian's arm. The appellants suggest that proposed traffic calming measures on Cawdor Road could reduce vehicle speeds to below 20mph. But, they do not

address the fundamental problems of road and footway geometry and the potential for pedestrian and vehicle conflict.

36. Community representatives highlighted the specific improvement measures for the railway underpass which were illustrated during the Enquiry by Design process which preceded the submission of the formal planning application. These measures included two dedicated pedestrian underpasses through the railway embankment to the east and west of the existing carriageway. Whilst I accept the appellants' position that Policy 18 and the Nairn South masterplan do not require these specific measures as a precondition for phase 1 to commence, it appears to me that the limited improvement measures proposed fall well short of an acceptable and safe solution for pedestrians using this part of Cawdor Road.

37. The junction at Millbank Crescent, Westbury Road and Cawdor Street is particularly busy during the morning peak hour. The primary school and nursery school at Millbank Crescent generate pedestrian and vehicle movements. During my site inspection there were a number of vehicle turning and crossing movements and pedestrian movements around the junction. The footway on the corner of Cawdor Road and Millbank Crescent was well used by pedestrians, including small groups of children assisted by a school crossing patroller. In my view, the footway area is already too narrow and congested to safely accommodate groups of people walking along Cawdor Road and others waiting to cross the road. I am not persuaded that the proposed build-out of the footway on the opposite side of Cawdor Road would improve the situation on the Millbank Crescent side. As a result, I would be concerned that additional pedestrian and vehicle movements generated by the proposed development would adversely impact on road safety, particularly pedestrian safety, at this junction.

38. The Swept Path analysis presented by the appellants in their 2014 Transport Technical Note demonstrates that some larger goods vehicles could safely negotiate a new junction layout at Cawdor Road / Balblair Road. However, it appears that the largest vehicle that could take the corner without mounting or overhanging the footway would be a medium sized refuse vehicle or equivalent. I accept the council's analysis that larger vehicles, including 11.0 metre refuse vehicles, would not be able to negotiate the junction in a single forward movement because of the restricted road width and the presence of the proposed build-out for pedestrian access to the station. Whilst the number of goods vehicles predicted to use the proposed new junction is relatively small, the inability of larger vehicles to manoeuvre safely here adds to my wider concerns about road and pedestrian safety at this location.

39. In response to these concerns, the appellants suggested at the Hearing that an existing retaining wall on the south-west corner of the junction could be set back to improve the situation. The proposal was not supported by technical evidence to demonstrate its likely effect. Similarly, there was no evidence to demonstrate its practicality and deliverability given the presence of stone retaining walls and the possibility that the land required to carry out the works could be in third party ownership. For these reasons, it would not be appropriate for a condition to be attached to secure these works if planning permission were to be granted.

40. The appellants do not propose to improve the situation for pedestrians beyond the limited measures identified in paragraph 33 above. Yet, Cawdor Road would be the main route for most vehicles and pedestrians generated by the development accessing the range of employment, community and commercial facilities in Nairn and beyond. For the reasons set out above, I find that the local road network, particularly the critical section along Cawdor Road and at its junction with Balblair Road, would not be able to safely absorb the projected traffic generated by the development. The combination of a substandard carriageway adjacent to a substandard footway along the critical section of Cawdor Road is a key constraint. The measures proposed by the appellants would be inadequate to remedy the potential problems and do not address the central issues of pedestrian safety and the likelihood of vehicle and pedestrian conflict along Cawdor Road.

41. Turning to the situation on Balblair Road, the appellants do not propose to access the appeal site from Balblair Road. Bollards would be erected at the end of two proposed roads within the development to prevent vehicular access onto Balblair Road. A new footway would be formed along the appeal site frontage. This would remain a relatively short and isolated section of footway until such times as a full connection was provided northwards along Balblair Road to its junction with Cawdor Road. I have considered if planning permission were to be granted, whether a condition could be attached to ensure that no development or residential units were commenced within the western part of the site (phase 2 (a)) until improved pedestrian and cycle access were achieved along Balblair Road to its junction with Cawdor Road. I have also considered whether such a condition could be linked to the implementation of the key deliveries identified for phases 1(a) and 1(b) in the council's Strategic Masterplan for Nairn South.

42. Significant works would be required to satisfy such a condition and some of these works would need to be carried out on land currently owned by third parties unconnected to the Nairn South development release. In particular, extensive improvements would be necessary along the frontage of the sawmill business operated by John Gordon and Son Ltd. In this location, the road width is substandard and there is an incomplete footway system. There are a large number of cross-road movements of HGVs and forklift vehicles as a result of the business operating from both sides of the road. A Traffic Regulation Order is also likely to be required to ensure that a comprehensive package of improvements was delivered that ensured the safety of all road users. The full set of measures could take some time to be implemented. Despite these concerns, on balance, I find that an appropriately worded condition could meet the tests of Circular 4/1998.

43. Although pedestrian access would be improved on Balblair Road, I consider that Cawdor Road would remain the primary route for pedestrians walking to and from the appeal site. It is likely to be the most attractive and convenient route for the town centre for most parts of the development. The proposed internal site footpath layout is also likely to draw pedestrian traffic towards Cawdor Road in preference to Balblair Road. The presence of an industrial-scale sawmill business on both sides of Balblair Road and other business activities further north would also discourage significant levels of pedestrian use along this route.

44. In light of all my concerns, the proposal fails to properly address the transport requirements set out in HwLDP Policy 18. The key vehicular and pedestrian links to the town centre would not be strengthened. Good connectivity between the development and the town centre would be prejudiced by inadequate junction capacity at Cawdor Road / Balblair Road, and by substandard road and footway geometry along Cawdor Road from Elizabeth Street to Millbank Crescent. The provisions for pedestrians along Cawdor Road are inadequate with no improvement proposals for most of the substandard footway. There are no specific proposals to improve conditions for cyclists.

45. The appeal proposal covers the area of phases 1(a) and 2(a) shown in the Strategic Masterplan for Nairn South. The masterplan reproduces some of the Policy 18 transport requirements under a schedule of deliveries for each phase. It follows from my conclusions above that the proposal does not satisfy phase 1(a) deliveries for road infrastructure improvements at the key Cawdor Road / Balblair Road / railway bridge junction. Other less critical improvements required by the masterplan could be covered by planning conditions or Section 75 obligations if planning permission were to be granted. I also find that the masterplan does envisage circumstances where phase 2(a) could be delivered in advance of phase 1(b), subject to a number of qualifications relating to vehicular access to Balblair Road and pedestrian and cycle access along Balblair Road. I am satisfied that planning conditions could control these matters.

46. I do not consider that there should be any obligation on the appellants, or any other developer of phases 1 and 2, to comply with the Strategic Masterplan requirement for a 'pause and review' on completion of 100 units and delivery of a further transport assessment. Such a requirement is wholly inappropriate and would undermine the grant of planning permission for any development in excess of 100 units. It would have the potential to nullify a significant part of the development. Prospective developers would not have the commercial confidence to proceed with housing proposals on any part of phases 1 and 2 given the financial and programming implications of any new transport requirements that could emerge. There would be no certainty that a developer and the council, as planning authority, could agree to the outcomes of a further transport assessment. On the basis of the above, a 'pause and review' mechanism would not be fair and reasonable and it would be unnecessary to make the development acceptable in planning terms. For the same reasons, such a requirement would not be a competent Section 75 obligation as it would fail the tests set out in Circular 3/2012 on Planning Obligations and Good Neighbour Agreements.

47. Policy 18 states that consideration must be given to provision of a distributor-type link road between Balblair Road and Cawdor Road. The Strategic Masterplan for Nairn South uses a different description and refers to a key delivery being a Cawdor Road / Balblair Road 'connector road'. Whatever the description of the road, I am satisfied that its main purpose would be to reduce reliance on Balblair Road as a link between Nairn South and the town centre because of its unsatisfactory road geometry and environmental quality. The reporter's conclusions in the HwLDP Examination Report (paragraphs 111 to 115) support this view.

48. The proposed layout shows 4 site accesses on Cawdor Road and 2 accesses on Balblair Road with an internal layout made up of a series of discrete street blocks. All roads within the site would have the same status and share similar geometry and dimensions. The appellants propose that the road running north-west to connect with a future Phase 1(b) would be the link road although there are a number of alternative through-routes between Cawdor Road and Balblair Road. Like other roads in the proposed layout, the Phase 1(b) link would have direct residential frontages. There would be provision for on-street parking and accesses to off-street parking areas. The link route would have a cross-roads junction and other staggered junctions along its length. Buses would be encouraged to stop on-street and not in a lay-by. Given these design qualities, it is difficult to envisage this route, or any other shown on the proposed layout, being an effective or attractive through-route for local traffic and public transport. I find that the proposed layout would discourage through-traffic and make it more likely that traffic generated from the western part of the development would choose to use Balblair Road albeit that this road could convert to one-way working sometime in the future.

49. The appellants draw support for their roads layout from Scottish Government advice in *Designing Streets* which emphasises the need to consider place before movement and where a hierarchy of streets is no longer appropriate. The advice found in *Designing Streets* should not have priority over other policy and development plan requirements. The development layout should not be developed in a vacuum nor slavishly adhere to advice in *Designing Streets*. While it is a material consideration, any design concept for the site must be guided by the requirements of the development plan. The layout should reflect local requirements and constraints, not least the inadequacies of Balblair Road and the need to encourage use of Cawdor Road.

50. It would have been quite feasible for a layout to incorporate a more direct link road with fewer constraints to convenient through travel for all types of vehicles whilst, at the same time, embracing the wider design principles and qualities found in *Designing Streets*. The absence of a clearly defined distributor or connector road of an appropriate standard is contrary to the requirements set out in Policy 18. I note the council's tacit acceptance of the proposed link arrangements and the proposed planning condition (16) in relation to its completion. I do not support this approach as it is at odds with the requirements of Policy 18. The HwLDP Examination reporter specifically sought the connection to be in the form of a distributor-type link road rather than in the form of residential streets and his recommendation on this matter forms part of Policy 18 in the adopted plan.

51. Policy 18 refers to the construction of a Nairn by-pass on the A96 road as a long term solution to divert through traffic away from the centre of Nairn. National Planning Framework 3 (NPF3) published by the Scottish Government in June 2014 includes a commitment to dualling the A96, including by-passes to towns along its route, with a completion date of 2030. Policy 18 notes that the scale of development that can proceed at Nairn South ahead of the by-pass will depend on the adequacy of alternative links. At this stage, the design, layout, land requirements and implementation programme for the A96 works have still to be brought forward and agreed.

52. Therefore, so far as transport matters are concerned, I have adopted the Policy 18 approach and assessed the appeal proposal solely on the basis of the capacity and adequacy of the existing road network in Nairn, particularly around the appeal site. For the same reasons, I do not consider it appropriate that a developer contribution should be made to the provision of the by-pass as proposed in Policy 18, and I note that the council does not seek such a contribution through a Section 75 obligation. The appeal proposal would be able to comply with the other key transport requirements listed under Policy 18 including contributions to off-site infrastructure. Some of these matters could be covered in a Section 75 agreement if planning permission were to be granted.

Policy 18: Design and the other requirements

53. The rural character and setting of this part of the southern edge of Nairn would change as a result of the development. These wider issues were considered as part of the local development plan (HwLDP) examination process and the impact of a strategic southwards expansion of Nairn was found to be acceptable subject to a number of safeguards many of which are listed under Policy 18.

54. I am satisfied that the development complies with design requirements in Policy 18. The proposed urban design, layout and building details are of a high standard. The layout and quality of the public realm including roads, green corridors, footways, landscaped areas, walls, hedges and boundary edges would create a distinctive, high amenity living environment consistent with the design principles and qualities sought in Designing Streets advice.

55. The location of a sizeable area of public open space on the highest part of the ridge traversing the site east to west would help reduce the development's massing particularly when viewed from the south. It would also allow long views out towards the south from within the site and it would have the potential to link with further amenity open space in phase 1(b). The network of green corridors would establish safe and well defined pedestrian links through the development. They would create strong links between street blocks and help establish a distinctive neighbourhood character.

56. An appropriate buffer area would be provided to the north to protect residents from the activities of the adjoining sawmill and its planned expansion. If planning permission were to be granted, conditions could be imposed to require mitigation measures to be constructed that would ensure noise levels around the proposed residential properties would not exceed acceptable limits. Noise monitoring conditions could also be attached so that it could be demonstrated that mitigation measures were appropriate and effective.

57. Policy 18 seeks tourism-related and business development provision or land reservations. This provision covers the full Nairn South plan allocation. The requirement has to be considered in the context of the wider Policy 18 requirement for Nairn South to be a mixed use development where employment opportunities must be provided. I concluded in paragraph 9 of this notice that the plan introduction to Policy 18 (paragraph 14.12.2) seeks localised employment opportunities within phase 1.

58. Taken together, the Policy 18 introduction and the tourism and business requirements place the onus on the appellants to explore the potential on the appeal site for employment and business uses. This has not been carried out. Instead, they rely on land to the north outwith the appeal site to fulfil the requirement. This approach does not fulfil Policy 18 obligations.

59. I do not have any concerns in relation to natural heritage, habitats, protected species, flooding, drainage and utility matters. If planning permission were to be granted, issues relating to additional school classroom provision; affordable housing; public transport; local road improvements; railway footbridge contributions and core path improvements could be secured through Section 75 obligations.

Conclusions

60. There is a proven requirement for additional housing land supply in Nairn. The principle of mixed use development on the appeal site has been established through the Nairn South development allocation set out in Policy 18: Nairn South in the adopted Highland-wide Local Development Plan 2012 (HwLDP). However, the proposal fails to meet 4 key requirements for development to proceed which are set out under Policy 18.

61. Firstly, the policy states that Phase 1 will be mainly residential use but with localised employment opportunities as part of a mixed use masterplan for the area. The appeal proposal covers part of the Phase 1 area and includes only residential development and so fails to meet this mixed use requirement and, instead, relies on the provision being met on land outwith the appeal site.

62. Secondly, I do not have confidence in the appellants' transport assessments and projections. The appellants have not provided a comprehensive transport assessment that is based on robust, relevant and up to date surveys and data. I find that it is very likely that the transport assessment upon which the appellants rely has underestimated future traffic flows on the local road network. In addition, the assessment has not taken full account of local conditions along Cawdor Road and, as a result, it is likely that the capacities of Cawdor Road and the Cawdor Road / Balblair Road / railway bridge junction to accommodate future traffic levels have been overestimated. Because of these deficiencies, I cannot rule out the possibility that the Cawdor Road / Balblair Road junction would be unable to cope with peak hour traffic flows on completion of the proposed development in 2020/2021.

63. Thirdly, my concerns about road and junction capacities are compounded by the substandard geometry and condition of Cawdor Road, Balblair Road and their associated footways. The proposal would prejudice the safety of all road users, including pedestrians and children walking to and from school, through its failure to provide adequate measures to improve the Cawdor Road carriageway and the single, narrow footway on its eastern side between its junctions with Millbank Crescent and Elizabeth Street.

64. Finally, the proposed development layout does not incorporate a distributor-type link road or other connector road of a suitable standard which would provide a convenient and

attractive route from Balblair Road to Cawdor Road and help reduce reliance on Balblair Road as a link between Nairn South and the town centre.

65. Therefore, the proposal fails to meet the essential road and transport infrastructure requirements set out in Policy 18 and supplemented in the Strategic Masterplan - Phases 1 and 2, Nairn South. These important matters outweigh the proposal's potential contribution to the local housing land supply and its high standard of design. I conclude, for the reasons set out above, that 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 by parties, but there are none which would lead me to alter my conclusions.

Iain G W Urquhart
Reporter

Decision by Iain Urquhart, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2097
- Site address: Land at Cawdor Road, Nairn, IV12 5LU
- Claim for expenses by Scotia Homes Ltd, Barratt North East Scotland and Robertson Homes, Appellants against The Highland Council
- Date of Hearing: 9 to 11 June 2014

Date of decision: 5 September 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 appellants in respect of the expenses of that part of the appeal relating to its unreasonable conduct on the matter of a proposed Section 75 obligation. 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 a 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. The claim was made at the appropriate stage of the proceedings.
2. The appellants' claim states that the council has not supported its reasons for refusal and has not substantiated that there are reasonable grounds for its decision. Secondly, it is argued that conditions recommended to be attached in the event that planning permission was to be granted fail to meet the tests contained in Circular 4/1998 relating to Planning Conditions. Thirdly, the appellants argue that a Section 75 obligation recommended by the council fails to meet the tests of Circular 3/2012 on Planning Obligations and Good Neighbour Agreements. I deal with each of these matters in turn.
3. The appellants highlight that the original planning application was recommended for approval by the council's Head of Planning and Building Standards (HPBS) subject to conditions. This recommendation was accepted by the council's South Planning Applications (SPA) Committee. The application was subsequently referred to the council's

main Planning, Environment and Development (PED) Committee for administrative reasons because comments on the application made by Nairn Suburban Community Council had been incorrectly ascribed to Nairn River Community Council in the HPBS report to Committee. In his report to PED Committee, the council's Director of Planning and Development supported the original recommendation to grant permission on the basis that there had not been any new material issues raised in connection with the proposal. As a result, it is claimed the Committee's decision to refuse permission was unreasonable and was not justified by alternative evidence. The refusal reason relates solely to roads infrastructure without reference to the Development Plan and it is not supported by the council's technical and professional officers. The appellants consider that the PED Committee was influenced by local opposition but failed to properly consider the technical transport evidence in support of the proposal.

4. I have considered the transcript of the PED Committee's meeting lodged by the appellants. There was considerable discussion and exchanges around local road issues as well as other matters. The discussions appear well informed and Committee members demonstrate an understanding of local issues. Committee members were made aware of the Development Plan status of the appeal site in the officers' report on the application. It is likely that local Nairn elected members on the Committee would have known the appeal site location. Equally, they would have been aware of concerns expressed by local community groups about the appellants' transport assessments and road conditions in the vicinity of the Cawdor Road / Balblair Road junction. It would not be unreasonable for Committee members to raise these views at the PED Committee meeting if they considered these concerns to be properly based and have some merit. I do not find any evidence that local opposition unduly or unfairly influenced the Committee's decision.

5. It is open to members of a Committee to depart from the recommendations made by the council's professional officers. Members are entitled to take a different view from officers if they consider there are relevant planning reasons for doing so. I find that the reasoning that underpins my decision to dismiss the planning appeal and refuse planning permission supports the Committee's concerns about local road conditions and the data and analysis in the appellants' transport assessment documents. The refusal reason in the council's decision notice is relatively brief and the wording could have been improved. But, it conveys the essential reasoning for the Committee's decision and relates to a relevant planning consideration. Therefore, on this matter, I do not find the council's approach has been unreasonable.

6. On the second matter raised, the appellants argue that condition (1) recommended by the council would amount to an unreasonable restriction on the planning permission. It potentially nullifies the benefit of the permission as it would prevent phase 2(a) of the development being implemented ahead of phase 1(b) which lies outside the appeal site.

7. The original condition recommended by the council does not accord with the tests set out in Circular 4/1998 as it would have been unduly restrictive. It would have fettered the scope of the planning permission and could have unduly delayed implementation of development. Compliance with the condition would also rely on the actions of third parties.

8. The issue of appropriate conditions to be attached if planning permission were granted was considered at a Hearing session. I understand the council's objective of managing the phased implementation of development and linking it to the provision of essential transport infrastructure but the condition as proposed is unacceptable. However, I noted in the appeal decision notice that, if planning permission were to be granted, it would be possible for a condition to be attached to ensure that no development were commenced in phase 2 (a) until improved pedestrian and cycle access were achieved along Balblair Road to its junction with Cawdor Road. Alternatively, a condition could be linked to the implementation of the key deliveries identified for phases 1(a) and 1(b) in the council's Strategic Masterplan for Nairn South. Both parties accepted that this form of condition would be appropriate and it would achieve the council's main objective.

9. While I disagree with the council's approach on this matter, I do not consider that it constitutes unreasonable behaviour in terms of Circular 6/1990. In any event, I do not consider that the appellants would have incurred unnecessary expense in addressing this particular matter in the context of their more substantive work on the appeal, including work on the closely related matters of Policy 18 compliance, development phasing and key Strategic Masterplan deliveries.

10. On the third matter raised, the appellants argue that a proposed Section 75 obligation for a pause and review of the development fails to meet the tests of Circular 3/2012 on Planning Obligations and Good Neighbour Agreements. I have already stated in the appeal decision notice that any requirement for a 'pause and review' on completion of 100 units and delivery of a further transport assessment would be inappropriate and it would undermine the grant of planning permission. For all the reasons set out in paragraph 46 of that decision notice, I consider that the proposed obligation would fail the policy tests set out in Circular 3/2012. For the same reasons, I find that the council has acted unreasonably by including this requirement in its Strategic Masterplan and then seeking to incorporate it in a Section 75 Agreement.

11. I find that the council's conduct in this matter has caused the appellants to incur unnecessary work and expense in addressing the proposed pause and review obligation as part of their appeal submissions and so the conditions set out in Circular 6/1990 have been met.

12. Therefore, I find that the council has caused the appellants to incur expense to address an aspect of the appeal which, because the council's reasoning was not soundly based, should have been unnecessary. I make a partial award of expenses as these expenses will not amount to the whole of the appellants' costs. I have taken account of all the matters raised, but find none that outweighs the considerations on which my decision is based.

Iain G W Urquhart

Reporter

Decision by Iain Urquhart, a Reporter appointed by the Scottish Ministers

- Appeal reference: PPA-270-2097
- Site address: Land at Cawdor Road, Nairn, IV12 5LU
- Claim for expenses by The Highland Council against Scotia Homes Ltd, Barratt North East Scotland and Robertson Homes, Appellants
- Date of Hearing: 9 to 11 June 2014

Date of decision 5 September 2014

Decision

I find that the appellants have not acted in an unreasonable manner resulting in liability for expenses and, in exercise of the powers delegated to me, I decline to make any award.

Reasoning

1. The claim was made at the appropriate stage of the proceedings.
2. The council states that it incurred expense for the following reasons:
 - the appellants' late submission of lengthy new documents without clarity about how these documents related to their original submissions;
 - the appellants' refusal to confirm the professional status of their transport witness who had lodged a Hearing Statement;
 - preparation for attendance of a replacement transport witness at the Hearing upon the late withdrawal of the appellants' original witness and,
 - the appellants' failure to lodge a Hearing Statement that fully set out their case as required by Procedure Notice No 3.
3. I note the background to the submission of the appellants' three core transport documents in support of their case. The original 2011 Transport Assessment had accompanied the planning application submission to the council. A Sensitivity Test report (2013) had been produced shortly after the council had refused planning permission for the appeal proposal. The appellants also lodged a Transport Technical Note (April 2014) in response to Procedure Notice No 1. The original Hearing date was cancelled to allow parties sufficient time to properly consider the technical information in this Note. A new

Procedure Notice (No 3) was issued and parties were invited to submit replacement Hearing Statements to address issues arising from all three transport documents.

4. The appellants' principal transport witness gave evidence to the Hearing and stated that the appellants' transport case relied on the original Transport Assessment and that the other documents were provided for illustrative and comparative purposes. I also note the appellants' response to this claim for expenses that points to the covering letter that accompanied the 2014 Transport Technical Note. It advises that the Note 'provides further clarity and up to date information on the TA.'

5. There was a degree of confusion on the part of the council and others about the status of the appellants' three transport documents during the initial stages of the Hearing. I think this was understandable. I find it unusual for the appellants to have submitted amended and updated data without replacing their original data as the basis for their case. While this approach required a degree of explanation from the appellants at the Hearing, I do not consider that it amounted to unreasonable behaviour. In any event, it was necessary for the council and other parties to consider all the submissions lodged by the appellants, at the very least, to understand the various data comparisons contained in the documents. I am not persuaded that the council needed to carry out unnecessary work or incur expense, beyond that which would be expected of a planning authority, as a consequence of the appellants' actions.

6. There were a number of exchanges between the council and the appellants on the exact professional status of a transport witness who had lodged a Hearing Statement in support of the proposal. However, I cannot find any reason why this issue would impact one way or another on the council's case in the appeal. Similarly, I do not find any justification in terms of the conditions set out in Circular 6/1990 for the council's claim that this matter constitutes unreasonable conduct on the part of the appellants.

7. The appellants provided a replacement transport witness, Mr Carrie, at the Hearing after their original witness withdrew for medical reasons. During the hearing sessions, Mr Carrie supported the appellants' lead transport witness. He also responded to questions from the Reporter and offered his professional opinion on various roads and transport matters. It is for each party to decide who should speak on their behalf at a Hearing. I would expect the council to have been ready to discuss all the transport issues raised by the appellants in their submissions to the Hearing. Mr Carrie did not submit a separate Hearing Statement and he did not raise issues in evidence that were not already before the Hearing. Therefore, I do not find any support for the argument that the appellants acted unreasonably or that the council incurred unnecessary expense preparing for Mr Carrie's involvement in the Hearing.

8. The council states that the appellants failed to lodge a Hearing Statement that fully set out their case as required by Procedure Notice No 3. The Town and Country Planning (Appeals) (Scotland) Regulations 2013 (Schedule 1 paragraph 5(a)) requires parties to submit a written statement which fully sets out the case relating to the specified matters which a person proposes to put forward to a hearing session. The substance of the appellants' Hearing Statement is set out over less than 3 full pages and only 11 paragraphs

address the main development impact issue contained in Matter 1 (Procedure Notice No 3). I do not find that it adequately or fully reflected the detail or complexity of the appellants' arguments in light of the subsequent transport evidence and discussions at the Hearing. The Statement relies heavily on simple cross-references to, sometimes lengthy, supporting documents but without appropriate detailed explanation. It does not properly explain the inter-relationship between different transport documents which only became apparent during the Hearing. Therefore, I find that the appellants' approach did not comply with the requirements of Procedure Notice No 3 and the 2013 Regulations and so amounts to unreasonable behavior.

9. Despite the inadequacies of the appellants' Statement, I do not find that the council's position was prejudiced and it was not prevented from submitting a comprehensive Hearing Statement on relevant matters. Importantly, I do not find that the council had to carry out any additional work because of the appellants actions. Equally, it was not compromised in the presentation of its case at the Hearing sessions. The council's claim for expenses is not supported by any evidence that the appellants' conduct has caused it to incur unnecessary expense and this is a condition in Circular 6/1990 that must be met for an award of expenses to be made.

10. Therefore, I do not support any of the council's arguments in support of the claim for award of expenses. I do not consider that the appellants' actions amount to unreasonable behaviour in terms of the conditions contained in Circular 6/1990. I have taken account of all the matters raised, but find none that outweighs the considerations on which my decision is based.

Iain G W Urquhart
Reporter