

## Directorate for Planning and Environmental Appeals

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Ms K Lyons  
Highland Council  
Sent By E-mail



Our ref: PPA-270-2112

18 February 2015

Dear Karen Lyons

### **PLANNING PERMISSION APPEAL: 38 CARSEGATE ROAD NORTH 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

*Christine Brown*

**CHRISTINE BROWN**  
**Case Officer**  
**Directorate for Planning and Environmental Appeals**



## Appeal Decision Notice

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Decision by Martin H Seddon, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA/270/2112
- Site address: 38 Carsegate Road North, Inverness
- Appeal by Munro Construction (Highland) Limited against the decision by the Highland Council
- Application for planning permission 14/02502/FUL dated 24 June 2014 refused by notice dated 26 August 2014
- The development proposed: change of use to waste transfer station (capacity 24,999 tonnes)
- Application drawings: 000001 location plan, 000002 front and rear elevations, 000003 floor plan, 000004 side elevations, 000005 site layout plan, 000006 site layout plan, 01D plan, section and elevations CA3178/02 roof plan.
- Date of site visit by Reporter: 11 November 2014

Date of appeal decision: 18 February 2015

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### Decision

I allow the appeal and grant planning permission subject the 6 conditions listed at the end of the decision notice. Attention is drawn to the 4 advisory notes at the end of the notice.

### Background

The appeal site is located within an area allocated for business/industry, referred to as the Carse in policy 14 (as continued in force) of the Inverness Local Plan. It is within a settlement development area as defined by the Highland-wide Local Development Plan.

The proposed transfer station would use an existing large industrial building to store and sort all received waste materials. The existing smaller unit would provide additional storage and office facilities. The waste materials received would include non-segregated municipal household waste, and recyclates such as cardboard, paper and tins. Skip waste received may include inert building materials and scrap. Waste would be sorted within the larger building to separate recyclable materials from the waste. The recyclates would be stored in segregated areas for collection and onward transfer to recycling facilities. Landfill waste would go to council operated sites. The planning officer's report to the South Planning Applications Committee anticipated that there would be fifteen refuse vehicles delivering waste on a daily basis and eight bulk waste vehicles collecting waste on a daily basis. The appellant has submitted a Working Plan (Version B) dated July 2014. This has been prepared in accordance with the provisions of section 2.3 of "A Guide to Waste Management Licensing". The working plan is a draft document which requires further

agreement with the Scottish Environment Protection Agency prior to the issue of a waste management licence. The Agency has confirmed that the proposals, as applied for within the waste management licence application, are capable of being authorised under the Waste Management Licencing (Scotland) Regulations 2011.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are whether sufficient justification has been submitted for the proposal, having regard to policy 70 of the Highland-Wide Local Development Plan, and the effect of the proposal on the surrounding existing and allocated land uses in respect of noise, odour and vermin, having regard to policy 34 of the local development plan.

2. The first reason for refusal in the council's decision notice is that no justification has been submitted for not pursuing the existing preferred sites identified in policy 70 (Waste management facilities) of the Highland-wide local development plan. The plan indicates that there are 2 categories of sites at which waste management facilities may be appropriate. These categories comprise the four preferred sites identified in the first part of the policy, and existing or allocated industrial land, provided that the application brought forward meets the seven criteria and four sub-criteria listed in the policy. The four preferred sites listed in the policy are:

- The former Longman's site, Inverness
- Seater Landfill site, Caithness
- Former landfill site, Portree
- Glen Nevis Business Park, and any expansion of it for industrial use

3. Of these sites, only the former Longman's site is within Inverness. Local development plan policy 70 advises that proposals for waste transfer should ensure minimisation of the transport of waste from its source. The appellant had submitted the application primarily to enable bidding for a council contract for a household waste transfer facility to cover Inverness and settlements located to the east at Culloden, Smithton and Westhill. However, the appellant has advised that the business does not rely on winning council contracts and that many of its customers are located within the Inverness catchment. The appellant has a site at Cromwell Road which is no longer operational and no longer viable because the proposed flood control scheme for the area will not adequately manage flood risk at that site.

4. The former Longman's site is owned by the council. On 12 March 2014 the council's property surveyor advised the appellant that no land was available to let at the Longman's industrial estate at present. Policy 5 of the local development plan advises that if and when the former Longman's site becomes suitable for development supplementary guidance will be prepared to indicate the council's updated policy. Furthermore, officer reports to the Inverness Area Committee in September 2014 do not indicate that the supplementary guidance has been prepared or adopted. In its appeal submission the council acknowledges that the appellant did look into the availability of the former Longman's preferred site and, in effect, the appellant's appeal statement has become its justification.

The council does not indicate that it accepts the appellant's case. However, from all the evidence before me I consider that the Longman's site is not currently available and that the appellant's appeal submission provides sufficient justification for not pursuing the Longman's site through non-availability, and not pursuing the other preferred sites because of their distance from the waste source at Inverness.

5. The council's appeal submission adds that the appeal site is not one of the preferred sites and must therefore be assessed against the criteria and sub-criteria in the policy. I will assess the appeal proposal against each of these criteria in turn below:

*Conformity with the Plan's Spatial Strategy in terms of the origin of existing and future waste generation*

6. The council's approach to waste management is for locally based solutions which can be delivered on an incremental basis. The appeal proposal would comply with such an approach because it is intended to serve the sorting and transfer of waste primarily from the Inverness area. In spatial terms the former Longman's site is not available, whereas the other 3 preferred sites identified for the provision of waste management facilities are too distant from Inverness. The appeal site is well placed in relation to the transfer of waste that is currently generated in Inverness and also for any future waste generation in that area.

*Conformity with other waste policies - the Zero Waste Plan (including the National Need and Capacity information), Scottish Planning Policy, Planning Advice Note 63: Waste Management Planning and, where relevant, the council's Municipal Waste Strategy*

7. Scotland's zero waste plan sets out the Scottish Government's vision for a zero waste society. This vision describes a Scotland where all waste is seen as a resource; waste is minimised; valuable resources are not disposed of in landfills, and most waste is sorted, leaving only limited amounts to be treated. The appeal proposal would assist in meeting the objectives of the zero waste plan by providing a facility for the sorting and transfer of waste, utilising waste as a resource through facilitating recycling and minimising disposal by landfill.

8. Scottish Planning Policy introduces a presumption in favour of development that contributes to sustainable development. It advises that the planning system should support economically, environmentally and socially sustainable places by enabling development that balances the costs and benefits of a proposal over the longer term. Clearly, the appeal proposal would involve the re-use of land and buildings and would conform to the objective of Scottish Planning Policy in facilitating the management of waste and resource recovery. There would be no significant conflict with the council's Municipal Waste Strategy, which is currently under review, or PAN 63.

*Minimisation of transport of waste from its source*

9. The proposed transfer station would be well located to minimise the transportation of waste from its source in the Inverness area.

*Suitability of the local road network and of the site access to accommodate the nature and volume of traffic likely to be generated by the proposed development*

10. The working plan includes a traffic management plan, details of weighbridge traffic movements and traffic movements around the site. The council's Transport Planning Team has reviewed the application and, other than during the construction phase of the development, considers that there would be little adverse effect on the public local road network. There is no reason to disagree because the proposed site is located within an established industrial estate with good access to the site itself and the local road network. Moreover the existing lawful use of the building for storage could result in significantly higher levels of vehicle movements if that use was to be recommenced.

*Public health or safety impacts*

11. The working plan for the site, including public health and safety considerations would be agreed and enforced by the Scottish Environment Protection Agency as part of the waste management licensing process. This would ensure that any risks to public health and safety would be properly considered and any significant potential harm mitigated and avoided.

*Compatibility with surrounding existing and allocated land uses*

12. The council advises that Carsegate Road is no longer simply an industrial estate but has evolved to incorporate a large number of operators that depend upon the public visiting their premises. Businesses in the immediate vicinity of the appeal site include car sales, car repairs, a car paint and body shop, household goods recycling, logistics and small industrial and commercial units with a range of engineering, and service uses. Despite the nature of some of these uses, this part of the estate still has an overall industrial character, with large storage and distribution premises nearby and use of Carsegate Road North by heavy goods vehicles.

13. I am satisfied that, subject to conditions, as assessed below, the proposal can be compatible with surrounding land uses.

*Whether the applicant has submitted sufficient information with the application to enable a full assessment to be made of the likely effects of the development, together with proposals for appropriate control, mitigation and monitoring*

14. The main supporting information submitted by the appellant is the working plan, version B. This has been prepared in relation to the waste management regulations. It provides details of controls and mitigation of impacts. Monitoring of the throughput of waste and compliance with the terms of any waste management licence that may be agreed would be the responsibility of the Scottish Environment Protection Agency.

15. The development would not have more than a local landscape and visual impact and a design statement would not be required. There would also be no need for restoration or after-use details. I consider that sufficient justification has also been provided as to why the preferred sites in local development plan policy 70 have not been pursued.

16. The council issued a screening opinion which considered that an environmental impact assessment was not required for the proposed development. In the circumstances

of this case I consider that there is sufficient information available to satisfy the criteria and sub-criteria in local development plan policy 70. On the basis of the above assessment I consider that there would be no conflict with local development plan policy 70 or policy 14 of the Inverness local plan.

17. The council's second reason for refusal refers to the proposed use not conforming to existing and approved adjacent land uses, which are predominantly retail, given that noise, odour and vermin nuisance cannot be wholly eliminated.

18. Local development plan policy 34 supports proposals within Settlement Development Areas if they meet the requirements of Policy 28: Sustainable Design and all other relevant policies of the plan. Proposals are judged in terms of how compatible they are with the existing pattern of development and landscape character, how they conform with existing and approved adjacent land uses, and the effect on any natural, built and cultural heritage feature. Developments which are judged to be significantly detrimental in terms of the above criteria will not be supported unless there are clear material considerations which would justify permission being granted.

19. The Scottish Environment Protection would control any dust and odour, quantities and types of waste and how it would be kept and handled through conditions under the waste management licence. The council's environmental health officer has raised no objections to the proposal, subject to conditions to control noise nuisance from reversing vehicle alarms and restriction upon the hours of operation.

20. The working plan refers to external storage bays for glass and inert waste constructed in reinforced concrete. The appellant has confirmed that, on request from the planning officer during consideration of the application it was confirmed that full internal storage of materials would be possible. Consequently no site layout plan was submitted to indicate the external storage proposals. The appellant has expressed a preference for storing glass and inert materials externally and the Scottish Environment Protection Agency has advised that this would be acceptable subject to the terms of a waste management licence. All timber and metals and non-conforming waste (including batteries and oil) would be stored within the building.

21. Glass and inert waste may not be necessarily malodorous. However, external storage of such materials could give rise to airborne dust during dry and windy weather conditions, particularly when being loaded and unloaded within the site. In addition it may not always be possible to remove litter and sources of food for birds, such as seagulls, depending upon the source of the material. Dust and vermin would be detrimental to the operation of some of the businesses in the area, such as the outdoor storage of cars for sale and car paint spraying. I consider that the council's suggested condition restricting external storage of waste would be reasonable and enforceable and in the interests of the protection of other business activities in the area. Restricting external storage would also reduce the potential for noise and disturbance from vehicle movements and reversing alarms affecting any occupiers of neighbouring land.

22. At the time of the site visit the appeal site had some outside storage in place. The appellant has confirmed that the site is not proposed to be used for the storage of goods or

materials not classified as waste. For the avoidance of doubt and in the interests of visual amenity a condition will be imposed accordingly.

23. The proposed capacity for the waste transfer station is that the maximum amount of waste brought on to the site shall not exceed 24,999 tonnes per annum. This is just below the minimum threshold of 25,000 tonnes specified by the Hierarchy Regulations for constituting a major application. The working plan proposes a maximum figure of 1200 cubic metres of waste (corrected to 1200 tonnes) to be stored on the site at any one time. However, the appellant's waste management licence application proposes a lower figure of 610 tonnes. The Scottish Environment Protection Agency has advised that a new licence application would be needed for a maximum of 1200 tonnes of waste being stored on the site at any one time, together with a site layout plan to demonstrate that the maximum storage amount would be achievable. I have no detailed evidence before me to demonstrate that such an amount of waste could be physically accommodated. In any event the appellant has advised that a maximum figure of 610 tonnes would be acceptable. I consider that this should be the subject of a condition to ensure that the amount of waste held would remain within the capacity of the site. I am satisfied that such a condition would be reasonable and enforceable and would enable the council to ensure that the amenity of neighbouring uses was protected.

24. The operations on the site would be predominantly contained within the main building, thereby mitigating noise emissions. The council's Environmental Health Officer has raised no objections, subject to conditions to control the hours of operation and use of vehicle reversing alarms. I am satisfied that the imposition of the council's suggested conditions would prevent any significant levels of noise and disturbance for current and future occupiers of land in the vicinity.

25. The working plan includes an odour management plan, which includes reducing the amount of waste to a minimum at all opportunities, door management, odour control systems such as air extraction to a bio filter and the use of de-odourisers.

26. The containment of waste sorting and storage within the main building would effectively prevent the attraction of vermin, including seagulls. The working plan includes measures to control vermin, insects and birds.

27. I consider that the imposition of the council's suggested conditions, and conditions on any waste management licence that may be authorised would mitigate any impacts in respect of noise and odour to acceptable levels. The Scottish Environment Protection Agency has advised that it would control any dust, odour, quantities and types of waste and how it is kept by way of a condition under a waste management licence. No disposal of waste would be allowed on site.

28. Retail uses in the area include car showrooms, a memorial workshop, and retail units at the Telford Retail Park. There also wholesale and storage and distribution uses. I acknowledge the economic benefits and employment opportunities that these uses provide. The restriction of outdoor storage of waste and other materials at the appeal site will ensure that the environmental impact of the development is acceptable for nearby businesses and their customers. In addition I consider that it is appropriate to require the appellant to provide screen fencing to complement the existing steel fencing where the boundary of the

site adjoins other occupiers. This additional screening may be secured by the imposition of a condition. The retail park has a separation distance of around 400 metres from the appeal site. It is identified as a tier 2 District Centre in the local plan. The retail park is not easily seen from the appeal site because of intervening buildings. I consider that, subject to conditions and control under the waste management licence, that there would be no significant detrimental impact on the operation of the retail park or its customers from the proposed use of the appeal site. The proposal will generate heavy goods vehicle movements passing the retail park and car sales businesses, but that would also be the case if the site was re-occupied for storage purposes. Overall, I consider that there would be no significant economic dis-benefits from the proposal for surrounding businesses and retailers.

29. The Muirtown Community Council strongly objects to the appeal proposal for reasons including its proximity to the Caledonian Canal with all the leisure pursuits and nature trails surrounding it. Reference is also made to proposals for regenerating the canal basin including areas of Carse with a focus on leisure and tourism. Scottish Canals have also objected in view of the potential for the area to be turned into a significant leisure and tourism destination. The planning officer's report advised that there would be a need to address the juxtaposition of different uses and these could be dealt with as part of any future developments within the wider area. There is no reason to disagree given the screening in places from buildings and vegetation between the appeal site, canal basin and Merkinch nature reserve and having regard to the controls that would be in place to mitigate any harm from the proposal.

30. Permission exists for small industrial starter units near the appeal site, but in view of the proposed controls over the proposal it is unlikely that there would be any significant deterrent to their occupation. Traffic from the proposal could pass near to residential areas, areas of playing fields/ open space and in the vicinity of the local primary school, but that would also be the case if the site was to be re-used.

31. Local development plan policy 6: Muirtown and South Kessock allocates the much wider Muirtown Basin, Carse and South Kessock areas for undefined mixed use development. The application site is within that area, but involves the redevelopment of a brownfield site for a use that is appropriate in an industrial area in accordance with local development plan policy 70. I note that a masterplanning exercise is underway for the area, but no development brief has been adopted. I consider that, subject to conditions and controls under a waste management licence there would be no conflict from the proposal with local development plan policy 6.

32. From the above I consider that the proposal would not conflict with local development plan policies 6, 34 and 28.

### **Other Matters**

33. Representations have raised objections on the grounds of flood risk, in particular because in October 2014 the Scottish Environment Protection Agency notified property owners in the vicinity that they were located in an area at risk from coastal flooding from waves or tidal surge, or a combination of the two. The Agency's mapping system indicates that the site is within a 1 in 200 year flood risk area. Local development plan policies 64



(flood risk), 65 (waste water treatment) and 66 (surface water drainage) are relevant. No objections to the proposal on the grounds of flood risk have been received from the Agency and the council has confirmed that the application raises no issues of concern in this respect. No objection was raised by the council's flood risk team based on the fact that the flood alleviation scheme (South Kessock Causeway and River Ness Flood Scheme Phase 2) for the area will be complete. On this basis the proposal would be acceptable in relation to flood risk and there would be no conflict with local development plan policies 64, 65 or 66.

34. The emerging development plan is the Inner Moray Firth Local Development Plan. The application site has no specific designation or allocation within the plan, but falls within the Inverness City Settlement Development area. However, use of existing or former industrial land for waste facilities is supported by policy 70 of the current adopted Highland-wide local development plan.

35. The council has suggested a personal permission for the sole benefit of the appellant. However, I consider that it would be inappropriate to impose such a restrictive condition for the reason of enabling the council to review the permission. This is because paragraph 92 of the annex to Circular 4/1998: *The Use of Conditions in Planning Permissions* advises that unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. It adds that a personal permission to a company is generally inappropriate.

## Conclusion

36. I therefore conclude, for the reasons set out above, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Martin H Seddon*

Reporter

## Conditions

1. The maximum amount of waste brought on to the site shall not exceed 24,999 tonnes per annum.  
*Reason: in order to provide the planning authority with the necessary controls should the amount exceed the stated limit and in the interests of amenity.*
2. The amount of waste stored at the site shall not exceed 610 tonnes at any one time.  
*Reason: in order to provide the planning authority with the necessary controls should the amount exceed the stated limit and in the interests of amenity.*
3. No storage of any waste materials or goods and materials not classified as waste shall be undertaken outwith the existing building/storage shed. For the avoidance of doubt the use hereby permitted shall not be commenced until details of the

measures to be put in place to prevent any storage of waste materials, including recyclates, outwith the main building/storage shed has been submitted to and approved in writing by the planning authority. Development shall be carried out in accordance with the approved details and thereafter retained in perpetuity.

*Reason: in order to protect the amenity of adjacent uses.*

4. The hours of operation that the waste transfer facility shall receive, sort and send waste off site shall be between the hours of 0700 and 1900, Monday to Friday, 0700 to 1900 on Saturdays and 1000 to 1900 on Sundays and public holidays.

*Reason: in the interests of the amenity of the area and adjacent businesses.*

5. The audible reversing warning systems on mobile plant and vehicles shall be of a type which, whilst ensuring that they give proper warning, have a minimum noise impact on persons outside the site. The use hereby permitted shall not be commenced until details of the means by which the use of audible reversing warning systems on all delivery and collection vehicles is addressed has been submitted to and approved in writing by the planning authority and thereafter implemented in perpetuity.

*Reason: in the interests of the amenity of the area and adjacent businesses.*

6. Prior to the commencement of the development hereby permitted details of additional boundary treatment shall be submitted to and approved in writing by the planning authority. Development shall be carried out in accordance with the approved details and the boundary treatment shall thereafter be retained.

*Reason: in the interests of the amenity of the area and adjacent businesses.*

### Advisory notes

1. **The length of the permission:** This planning permission will lapse on the expiration of a period of three years from the date of this decision notice, unless the development has been started within that period (See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

2. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

3. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

4. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning

(Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013).

