

## Appeal Decision Notice

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Decision by Robert Seaton, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2139
- Site address: Scotia House, Dudgeon Park Road, Brora, KW9 6NA
- Appeal by Kinburn (123) LLP against the decision by Highland Council
- Application 15/02894/FUL for planning permission dated 25 July 2015 refused by notice dated 29 September 2015
- The development proposed: erection of new steel-framed whisky-storage warehouse (8,845 square metres) and associated landscaping
- Application drawings: listed in schedule 1 to this decision
- Date of site visit by Reporter: 13 November 2015

Date of appeal decision: 8 January 2016

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### Decision

I allow the appeal and grant planning permission subject to the eight conditions listed in schedules 2 and 3 to this decision notice. Attention is drawn to the three advisory notes at the end of the notice.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise.
2. Having regard to the provisions of the development plan the main issues in this appeal are the effects of the proposed development on landscape and visual amenity, particularly on account of loss of screening trees, and impact on residential amenity as a consequence of any increase in black mould and social and economic effects of the proposed development. Loss of agricultural land has also been raised as an issue.

### Terminology and the application site

3. The appeal site (shown in drawing PL\_01 Rev C bounded by a continuous red line) does not include the existing buildings of Scotia House other than those proposed to be demolished or moved - the application boundary is fairly tightly drawn around the proposed new warehouses and some, but not all, of the proposed new landscaping. The land under the appellants' control is shown on the same plan enclosed by a broken red line. The appeal site also includes a small area of land that is not attached presently to Scotia House but lies in a field beyond the existing south-western woodland. In the course of this



decision, I will refer to the land presently attaching to Scotia House as “the Scotia House site” to distinguish it from the appeal site. When I want to refer to all the land under the appellants’ control I will refer to it as “the appellants’ landholding”.

## Development plan

4. The development plan is the Highland Wide Local Development Plan 2012 and the Sutherland Local Plan 2010 (so far as it is retained by effect of paragraph 3.3 and Appendix 7 of the Highland Wide Local Plan).

5. The Sutherland Local Plan proposals map allocates the Scotia House site (as allocation MU2) for “mixed use”. The uses envisaged include additional housing along Dudgeon Drive, possible tourism or retail development, and “further development of business uses at Scotia House, to be concentrated to the rear”. It is not entirely clear what is meant by “the rear”. However, it appears most likely to mean the southern corner of the Scotia House site where there is existing planning permission for new warehouses and in which the new row of warehouses is proposed in this appeal (i.e. the rear of Scotia House in relation to the settlement of Brora). The application site extends somewhat beyond the boundary of the MU2 allocation to include an area proposed for new landscaping.

6. As regards economic development, the Sutherland Local Plan strategy (paragraph 4.16) indicates it is essential to sow the seeds of long-term regeneration and economic stability, and so to address population trends by providing opportunities for young and working age groups to stay or settle in Sutherland. The Highland Wide Local Development Plan 2012 also sets out a vision that involves providing opportunities which encourage economic development and create new employment across the area focusing on key sectors, among which are food and drink and tourism.

7. Three policies of the local development plan are cited in the Council’s reason for refusal:

8. Policy 28 of the local development plan lays down a number of factors to be assessed in respect of sustainable design. The policy requires assessment of the extent to which a new development makes use of brownfield sites and existing buildings, impacts upon individual and community residential amenity, demonstrates sensitive siting and high-quality design in keeping with local character, impacts upon air quality, and contributes to the economic and social development of the community. Developments that are judged to be significantly detrimental in terms of these criteria do not accord with the plan.

9. Policy 29 provides that new development should be designed to make a positive contribution to the architectural and visual quality of the place in which it is located.

10. Policy 51 deals with trees and development. It provides that the Council will support development that promotes significant protection to existing trees and woodlands on or around development sites, that the developable area of a site is to be influenced by tree impact, and that the Council will secure additional hedge or tree planting to compensate for removal and to enhance the setting of any new development.

11. A number of other policies of the Highland Wide Local Development Plan are mentioned as relevant in the Council's committee report. The following also appear to me to be relevant to the determining issues in the present appeal:

12. Policy 34 indicates that proposals on development sites (such as MU2) are to be supported subject to sustainable design criteria set out in policy 28 and other relevant plan policies.

13. Policy 41 refers to safeguarding of business and industrial sites in various settlements including Brora, and directs new development to those sites, unless a justification can be provided for development elsewhere.

14. Policy 61 requires new developments to be designed to reflect landscape characteristics and special qualities, including consideration of scale, form, pattern and construction materials, and potential cumulative effects.

### **Relevant policy and guidance documents**

15. Highland Council's Sustainable Design Guide (2013) sets out the standards of design the Council expect to see in new buildings.

16. Scottish Planning Policy sets out policy principles at paragraph 93 that the planning system should promote business and industrial development that increases economic activity while safeguarding and enhancing the natural and built environment, allocate sites that meet diverse business needs, and give due weight to the net economic benefit of proposed development. Paragraph 94 identifies the food and drink and tourism sectors as key sectors for Scotland with particular opportunities for economic growth. Paragraphs 28 and 29 of Scottish Planning Policy also include a presumption in favour of development that contributes to sustainable development.

17. The National Planning Framework refers to the opportunities to develop existing strengths of coastal and island areas, including continuing strengths in the key sectors of food and drink (and whisky specifically) and tourism, and its positive economic effects for those areas in terms of new employment, reversing population decline, and stimulating the demand for services (see paragraphs 1.7, 2.2, 2.24 and 2.34).

### **The proposed development**

18. The proposed warehouses would extend existing warehouses at the Scotia House site, almost doubling the existing floorspace. I understand from submissions that some of the existing warehouses themselves were previously a tweed mill. Planning permission for an additional 5,537 square metres of storage was granted in 2013, of which 1,976 square metres has been built out. The remainder of that planning permission cannot effectively be implemented for the proposed bonded warehouse use on account of a requirement for a minimum separation distance between the south-western front of the existing warehouses and the new row. The reason for this separation distance has not been detailed by the appellant but is said in the Council case officer's committee report to be "for insurance/health and safety reasons". Had the present appeal been refused, the remainder of the existing planning permission could still have been implemented for storage purposes other than the proposed bonded whisky storage.

19. The two existing rows of warehouses are oriented to face north east parallel to each other and to Dudgeon Park Road, the closest street in Brora, which is about 110 metres from the closer row of warehouses. The appellants propose to remove the existing offices attached to the northern-western flank of the existing warehouses, then add a new warehouse to the north-western end of each row. They also propose to add two warehouses to the south-eastern end of the row closer to the village. A further new row of five warehouses parallel to the existing rows is proposed to be added to the south-west. The tanks presently located to the south west of the existing warehouses would be re-located to the north western flank of the new row. Landscaping works are also proposed.

### **Effects upon visual amenity and the landscape setting of Brora**

20. Issues relating to visual effects, and particularly to their mitigation by landscaping, are at the heart of the decision on the present appeal. A number of the Council's reasons for refusal relate to the proposed development's adverse effects on landscape and visual amenity (impact on landscape and scenery when viewed from the south and on community residential amenity, insensitive siting and lack of positive contribution to the architectural and visual quality of the village, and removal of screening trees). Objectors also raise the possibility of adverse consequences for tourism arising from those effects.

21. There would be two main aspects to the proposed works that would cause landscape and visual effects: first, the impact of the proposed new warehouses themselves (and the removal of the existing offices), and second, the proposed removal of landscaping to the south west and the new landscaping proposals. To determine the degree of these effects, the present baseline needs to be considered.

#### *The baseline*

22. The existing buildings at the Scotia House site are large in size and utilitarian in design. They are obvious when approaching Brora along the A9 from the south west. They occupy the horizon between the mountains and the sea, and are the first buildings seen in Brora. My site visit was on a November forenoon with heavy though broken cloud. The colours of the existing warehouses – white and grey - somewhat mitigated their visual impact in those weather conditions. The existing offices, built of different material from the warehouses, of a different colour, and with windows in them, do presently somewhat relieve the overall blank utilitarian appearance of the existing buildings at Scotia House. When viewed from the layby on the A9, the visual separation between the existing Scotia House buildings and the buildings of the village is such that there is not an immediate sense of Scotia House being significantly out of scale with its surroundings, notwithstanding the large size of the existing buildings.

23. The existing bund and woodland to the south west partially hide the existing warehouses. The screening provided by the woodland is likely to be more effective in summer than on the day of my site visit, when the warehouses could clearly be seen behind the trees. There is a gap between the two stands of trees on the bund, through which, from a viewpoint at the layby on the A9 just to the south, part of the existing buildings can be seen in almost their full height. From the layby the existing offices can also be seen to the west of the western stand of trees. The view from points along the A9 on the approach to

the warehouses changes as the viewer approaches Brora. However, I did not observe the screening provided by the bund and trees to be so complete at any point that the warehouses would not be seen even when the trees were in leaf. Once northbound traffic reaches and passes the site, there is no screening of the existing warehouses along the boundary of the Scotia House site with the A9.

24. The appellants claim that the existing woodland to the south west is in poor condition due to overcrowding and a lack of management including thinning, that the trees have limited future potential and that a substantial proportion are ash, whose life expectancy is limited on account of the likelihood they will be affected by ash dieback disease. The committee report (paragraph 1.4) acknowledges that the existing woodland on the bund is in poor condition due to lack of maintenance and is likely to continue to deteriorate, reducing its screening and amenity value, and that the trees are relatively small (paragraph 8.9). There is no direct confirmation of these claims in expert evidence before me: the issue is not directly dealt with in the Council forestry officer's consultation response, nor in any expert forestry evidence submitted by the appellants (the appellants assert that the opinion of their landscape architect and the Council's forestry officer is that the landscaping is in poor condition, but have not submitted evidence of those opinions beyond that assertion). However, neither the Council in its appeal response nor any objector has sought to rebut these claims. No indication was given in the committee report or the appellants' evidence as to the expected rate of decline of the existing woodland, and therefore the rate at which its effectiveness as a visual screen would decline. In the light of the limited evidence before me, I find that, unless cut, the existing woodland is likely to provide visual screening for some years to come, but will eventually decline. It is possible its effectiveness as a screen will be significantly reduced before the end of the life of the existing buildings. Separately, the removal of trees does not itself require planning permission, although the Council has statutory powers to protect trees and woodland. I was provided with no evidence by the Council or other objectors of any planning requirement imposed or other legal steps taken by the Council that would ensure the existing woodland would be retained if the present appeal was not granted.

*Effects of development: proposed removal of the south-western woodland*

25. In order to provide the space for the proposed new warehouse row (including the required separation distance from the existing rows), the appellants propose to remove the existing southern bund and the woodland cover on it. They propose new landscaping, their proposals being set out in drawing BRO-001 Rev C. These include a new bund in the field to the south of the existing bund (to the south of the existing farm access), woodland planting on the proposed new bund, specimen tree planting in front of the new warehouse row, new planting of specimen trees and woodland on the boundary of the Scotia House site with the A9 (both within and beyond the application site), and management of the existing woodlands on the existing bund between the warehouses and Dudgeon Drive. The proposed removal of the existing southern bund and trees would cause the proposed and existing warehouses to be exposed to full view from the south west. The Council's forestry officer estimates that there would be "very limited screening benefit [from the proposed new planting] for at least 5-10 years, depending on the quality of [its] maintenance". Although no further detail is provided, this suggests that the screening would not provide its full benefit for some years after that.

*Effect of development: proposed new warehouses (and removal of existing offices)*

26. Viewed from the layby on the A9 to the south west, the proposed new warehouses would extend the outline of the existing building group at Scotia House to the north west by a relatively small degree. They are likely to extend the view somewhat further to the south east, given the position of the new south-western line of warehouses, but again, by a relatively small degree. Therefore, although the proposed buildings would be large, they would be seen as an extension of an existing group. There is some separation in the view from the layby between the existing buildings of Scotia House on the right and the few houses in the settlement that can be seen to the left. The proposed warehouses would bring the outline of the building group visually somewhat closer to the existing houses. However, I find that this would not substantially change the existing impression of scale. The offices would be replaced by the proposed row-end warehouses. From the layby, the proposed new warehouse row would appear in the foreground. Although in form, the proposed buildings would be different from the existing buildings (with gables to the south), their overall visual effect would not be very different (notwithstanding the removal of the offices, which presently provide some variety and so slight relief). The building group altered as proposed, when viewed from the layby, would have an anonymous industrial form set out in a monotonous row. As a group of industrial buildings, it would not be unusual or surprising, other than in the size of the buildings. In comparing the present baseline with the proposals, if it is assumed in the baseline case that the existing woodland would be removed or its screening effect substantially reduced before the end of life of the existing buildings, I find that the degree of impact as a consequence of the proposed development would not be of a different order to the impact of the existing buildings at that stage. Furthermore, the proposals would benefit from the new landscaping, once it became established.

*The receptors of landscape and visual effects*

27. There would therefore be adverse visual effects for northbound travellers by car along the A9 or by rail, and for the scattered houses to the south west of the appeal site. Until the proposed landscaping became established, the view would not be relieved, as at present, by woodland at the site itself.

28. The adverse visual effect would be likely to extend for some distance down the A9, though decreasing in magnitude with distance. For northbound travellers on the A9, the proposed new buildings would be viewed as directly ahead, and therefore are likely to become obvious from about the junction with the access to Moray View. The effect on the visual amenity of these travellers' views would therefore undoubtedly be significantly adverse compared with the present views. The sensitivity of travellers to such effects is, of course, somewhat tempered both because the effect for them is transient, and also because travellers will often have matters to concentrate on other than the view.

29. Neither the Council nor objectors have expressly referred to the visual impact of the proposed development upon railway passengers. The Scotia House site is immediately beside the railway and at a right angle to it. Since railway passengers generally do not to have as great a forward view as road users, they would tend to become aware of the proposed development only when it was already relatively close. There is no screening

between the existing buildings and the railway as it passes them. Therefore I find that the impact upon railway passengers would be substantially less than upon travellers on the road.

30. There are no houses or other buildings in close proximity to the application site to the south west. The closest appears to be Inverbrora Farm, which is rather more than 500 metres away, from which it appears views to the proposed development would be somewhat restricted by tree cover around the farmhouse. Other houses to the south west look towards the proposed development, including Moray View and its neighbours, though from a significantly greater distance. Although the proposed development would not be close at hand, residents are more likely to place a high value on a view they live with than travellers for whom the view is transient. Therefore there are likely to be adverse visual effects on the scattered community to the south west that are material to my decision, although the distance and, in some cases intervening vegetation, would limit those impacts.

31. Finally, there would undoubtedly be an adverse effect upon the landscape setting of Brora in its south-western aspect, given the site's position at the entrance to the village. However, as at present, the buildings at the Scotia House site would be seen as an industrial area outside the main village.

32. Although the main effects on landscape and amenity occur to the south and south west, there would also be visual effects in other directions. However, visibility from the houses around Dudgeon Drive would be restricted by existing landscaping which is proposed to be retained, while the houses around Col Bheinn Road and Rosslyn Street are not oriented towards the proposed development and views are also restricted by existing landscaping. There are some houses looking across the site from the north, but those houses are some distance away, across the River Brora, and would presently have an unscreened view of the existing buildings at Scotia House. Travellers passing the site on the A9 would see the new warehouses closer at hand than the existing buildings, so the new development may also have a somewhat greater impact in this respect. There would, however, still be a strip of over 20 metres between the closest corner of the new warehouse row and the road edge, while the new end-row warehouses on the two existing rows would be over 30 metres from the road. The separation would be likely to mitigate somewhat the impact of the proposed buildings in terms of their scale, as well as allowing space for the proposed landscaping. The proposed landscaping – once it was established - and the proposed maintenance would reduce the effect of both the existing buildings and proposed buildings in these views, and would do so substantially in views from the north.

### *Conclusions on landscape and visual effects*

33. I find that the main visual effect of the proposed development would be as a consequence of the removal of the existing woodland. The proposed warehouses themselves are such as might be expected as an extension of an existing group of industrial buildings on an existing industrial site. The removal of the woodland would undoubtedly have significantly adverse landscape and visual effects in the medium term, particularly on the visual amenity of travellers on the A9, and to a lesser extent on rail travellers and the scattered community to the south west of Brora, and would have an adverse effect on the landscape setting of Brora. However, I agree with the assessment in the committee report (paragraph 8.12) that the appeal proposals in the longer term would

be likely to provide more effective and attractive landscaping than the existing landscaping, including better screening for the buildings on the Scotia House site in views from the south west. Although the evidence does not clearly show the existing woodland would be removed or its screening effect would be substantially reduced before the end of the life of the existing buildings, it does show that the woodland is likely to decline over time without maintenance. There is no reason to believe that the Scotia House site will not remain – at least in part - an industrial area in the longer term, with large industrial buildings. Since it is a site of some prominence, the establishment of better landscaping for the site and a maintenance regime to ensure it is well managed over the longer term is a consideration of significant weight.

### **Extension onto agricultural land**

34. The Council's reasons for refusal refer to the need to extend the development onto agricultural land. Impact on agricultural land is referred to as a factor for assessment of proposed development in the Highland Wide Local Development Plan policy 29. The appellant is not entirely correct to say that no development is proposed on agricultural land – a new bund is proposed, and the use of the land is proposed to be changed from agriculture. I have been provided no evidence as to the land's agricultural quality. However, it is only a small area. Therefore, I find that, for such a minor encroachment, only very limited weight need be placed upon the protection of agricultural land.

### **Community residential amenity and black mould**

35. Both a number of objectors and (in its response to the appeal) the Council have raised the issue of black distillery mould or fungus and its effect on residential amenity. The appellants cited – but did not provide – evidence commissioned by the Scotch Whisky Association indicating no causal link between blackening of buildings and whisky production has been established (no claim is made that any such link is disproved). The Council's environmental protection officer did not object to the proposed development on this ground, and provided a report on black mould produced in respect of a previous distillery development elsewhere in Scotland. The account given by the report is that black mould is said often to grow on distillery buildings encouraged by ethanol vapour arising from the evaporation process of whisky, and sometimes to spread to neighbouring houses. Distillery mould has been analysed and found to comprise a number of common fungi, none of which have been shown to be human pathogens.

36. The environmental protection officer's response does not indicate that any statutory nuisance would be likely to arise as a consequence of permitting the development. No expert evidence has been provided to suggest otherwise. However, presence of black mould might cause concern about health, as the report suggests and the objections indicate, and also have an aesthetic impact.

37. The existing warehouses at Scotia House have been used as bonded warehouses for several years. There did appear to be some slight black staining on the exterior of those warehouses, which might indicate that black mould was present. With a view to minimising the visual impact from black mould on the warehouse buildings, the Council's case officer proposed a condition requiring the cleaning of the proposed buildings every three years. I find that this condition is sufficient to deal with any impact of black mould upon amenity in



respect of the proposed development itself, subject to one alteration: I have revised the condition so that a programme of cleaning of all buildings at the Scotia House site is required rather than just the proposed buildings, in order to minimise any visual impact as a consequence of inconsistent approaches being taken in respect of the existing and proposed buildings.

38. Neither the Council nor any objector directed me to any specific significant existing example of staining by black mould outside the Scotia House site. The proposed warehouses would be no closer to houses in the settlement than the existing warehouses and most would be further away - I acknowledge the objectors also express concern about the greater volume of whisky proposed to be stored. There is significant separation between the existing warehouses and the nearest houses and the site is open and exposed to sea breezes, all of which might be expected to result in dissipation of the ethanol vapours said to encourage black mould. When I visited the neighbouring housing in Dudgeon Drive and surrounding streets, I did not see any significant evidence of problematic black mould attaching to the buildings there. I also visited the village of Tomatin, beside the Tomatin distillery, as suggested by one of the parties at my site inspection, but did not find anything there that would provide further evidence in respect of the potential for black mould at the appeal site.

39. Therefore, as regards the possibility of black mould forming on local housing to a degree that would be problematic, I find that there is not sufficient evidence before me to persuade me that such an effect is likely. However, should such an effect occur and cause a nuisance, the Council has statutory powers that might be applied to abate any such nuisance, and I take this into account in reaching the conclusion that no planning condition is necessary in respect of any effect of black mould upon buildings outside the Scotia House site.

### **Over-development**

40. The Council, in its reasons for refusal, claimed that the proposed development was an over-intensive development of the site. In its response to the appeal, it related this claim to the requirement to remove existing trees, and to extend the development beyond the boundary of the MU2 allocation to take in agricultural land. I have set out my findings in respect of the removal of the trees and use of agricultural land and the consequent landscape and visual effects above. I do not find it necessary to consider the claim of over-intensive development separately.

### **Social and economic effects**

41. The appellants acknowledge that no new jobs would be created by the expansion of whisky storage on the site. However, they state that there is a strong and unmet need for bonded warehouse space in Highland, and that without permission being granted for such space, then either whisky would have to be transported to the central belt for warehousing there (so increasing transport costs) or production would have to be scaled back. It seems likely to me that the appellants, as operators of bonded warehouses, would be in a position to know the demand for warehousing space in Highland. The Council has not produced any contrary evidence. Furthermore, those claims are supported by a letter from the Glenmorangie Company indicating that they had an urgent need for warehousing space

having regard to their present production programme. They say that the Scotia House expansion had been identified as the optimum location for several reasons including proximity to the distillery, expansion of an existing warehouse site, and continuing to use their local warehousing team. The appellants state that the Glenmorangie Company is fully committed to Scotia House and to the proposed development and claim on this basis (and the Council's case officer accepted) that the proposed development would safeguard existing local jobs. In responding to the appeal, the Council did not deny that jobs in the north Highlands would be safeguarded. I find that jobs at Glenmorangie would be safeguarded as a consequence of the proposed development.

42. In refusing the application, the Council asserted that there was no over-riding economic benefit to the local community. In its response to the appeal, it makes clear that by the "local community" it means the settlement of Brora. Although there is limited evidence, I find that the economic benefits to Brora itself are likely to be limited. However, the safeguarding of jobs at Glenmorangie is an economic and social benefit to the community of the north Highlands. Brora would benefit as part of that wider community.

43. In responding to the appeal, the Council made the additional claim in respect of the economic impact of the proposed development that the development plan allocation anticipates that site could also be suitable for retail or tourist development and that those employment opportunities would be lost as a consequence of the proposed development. I find, however, that the Sutherland Local Plan anticipates a variety of uses on allocation MU2 – further business uses and housing are mentioned along with possible opportunities for retail. On my site visit, it was evident there would be room on the site for both tourist / retail and housing uses even after the proposed development had been implemented (subject to any considerations relating to retaining the screening of the industrial buildings). The proposed development would not preclude retail or tourist uses elsewhere in the MU2 site.

44. In an apparently related reason for refusal, the Council stated that there was no over-riding linkage between additional storage by the applicant on the site and production elsewhere. The Council does not explain in its response to the appeal the basis of this reason for refusal in terms of the development plan policies it cited, nor why, in planning terms, such a linkage should be thought necessary. I have not found any such policy requirement.

45. Brora Community Council and one objector suggested that there might also be a negative economic impact because the proposed development would deter tourists from stopping at the village. While such an economic effect, linked to the effect of the proposed development on visual amenity, is possible, there is no evidence before me that would allow me to gauge its likelihood or degree – I have no information, for instance, on the number of visitors passing through or stopping at present, or on the reasons for which they are stopping in Brora. In the absence of such evidence I cannot find that a significant effect upon tourism would be likely. I doubt that an effect on tourism could be read across such that it was directly proportionate to any effect upon the visual attractiveness of Brora: it appeared to me on my site visit that Brora is likely to have a number of draws for tourists and other visitors besides its visual attractiveness.

46. The committee report refers to employment opportunities in construction of the proposed warehouses. Given the short-term nature of such opportunities, I place limited weight upon them as economic benefits.

## Assessment

47. I find that the proposed development complies with the allocation of site MU2 in the Sutherland Local Plan for mixed-use development including further development of business uses to the rear of Scotia House. It is therefore supported by Highland Wide Local Development Plan policy 34 subject to assessment against the factors set out in policy 28 on sustainable development and other policy criteria in the plan.

48. In respect of the elements of policy 28, I make the following findings:

(a) The proposed development is compatible with public service provision, makes use of a brownfield site (with the exception of its extension into agricultural land to the south west), has a small impact on agricultural land (though there is no evidence before me as to its quality) but does not otherwise have an impact on non-renewable resources or approved road or rail routes, and has no impact on listed resources other than landscape and scenery.

(b) I have set out my finding in respect of the effect of the proposed development on landscape and visual amenity at paragraph 33 above. I find that the proposed development is not unacceptable in this respect in terms of policy 28.

(c) As regards its siting, the proposed development would be largely on an allocated site, alongside an existing building group of similar scale, used presently for the same purpose. No other site has specifically been proposed by either the Council or objectors as more suitable. To accord with policy 41 of the Highland-Wide Local Development Plan, if the appellants had proposed an unallocated site, they would have had to provide a justification for not using the Scotia House site.

(d) As regards design, the buildings are designed for their purpose, and are of a reasonably similar type to the existing buildings. Matters such as colour and cleaning of the proposed buildings can be controlled by condition so as to minimise impact and coordinate with existing buildings.

(e) I have set out my findings regarding the possible impact of black mould on residential amenity at paragraphs 38 to 39 above. I have not found evidence that such an effect is likely.

(f) I have set out my findings on social and economic effects of the proposed development on the community at paragraphs 41 to 46 above. The Council has argued that there is no benefit to the “local community” of Brora. However, the Council has not produced any reasoning to demonstrate that an economic or social benefit that is local to Brora specifically is required by the development plan (or other planning policy). Reading the West Highland Local Development Plan as a whole, I find that the word “community” cannot be given such a restricted interpretation. There is likely to be an economic and social benefit to the wider north Highland community, such that the development accords with this

element of policy 28. Furthermore, the Highland Wide Local Development Plan (like national planning policy) clearly encourages development to take advantage of economic opportunities in the food and drink industry, such as the proposed development.

(g) Other elements of policy 28 have limited relevance to the proposed development.

I have not found that the proposed development is significantly detrimental in respect of any of the elements of policy 28. Therefore, overall, I find that the proposed development complies with policy 28.

49. Although policy 51 indicates that the developable area of a site is to be influenced by tree impact, given the lack of protection accorded to the existing woodland and the proposals for replacement landscaping and its maintenance, I do not find the proposed development to be contrary to the policy. For similar reasons, I do not find that the proposed development, when taken together with the landscaping proposals, is contrary to policy 29 on design quality and place-making, notwithstanding its medium-term adverse visual effects. The Council's reasons for refusal made no reference to policy 61 on landscape. This may be because the adverse landscape effects are localised. I have found that, while there are adverse effects on the landscape setting of Brora in the medium term, the setting of Brora would be improved over the longer term. I therefore do not find the proposed development is contrary to policy 61.

50. Overall, I find that the proposed development complies with the development plan. As regards other planning policy and guidance material to the decision, I make the following findings:

(a) Highland Design Guide: I have set out my findings in respect of the siting, design and response of the proposed buildings to the landscape above. The siting and form of the proposed development, including the landscaping proposals, can be justified in terms of the design guide.

(b) National Planning Framework: Development of infrastructure for an expanding whisky industry in rural and coastal communities such as Brora is clearly anticipated in the National Planning Framework.

(c) Scottish Planning Policy: Similarly, I find that the proposed development is supported by Scottish Planning Policy as one element in supporting the present production programme at Glenmorangie, given that it will - in the longer term - safeguard the natural and built environment. I also accept the appellants' submission that, if local warehousing does not become available and if Glenmorangie's production is not to be scaled back, it is likely whisky would have to be transported further and possibly to the central belt, so increasing transport impact. I have considered a number of other factors relating to sustainability in discussing compliance with the development plan. Overall, I find that the development is supported by Scottish Planning Policy's presumption in favour of development that contributes to sustainable development.

51. I therefore conclude, subject to the conditions set out below, that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would still 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.

## Conditions

52. The Council case officer proposed a number of conditions. I have adopted these along with the reasoning for them with two changes. First, I have amended condition 1 so that consent is expressly required from the Council for the final colour scheme for the proposed development, in order to ensure that the colour scheme chosen coordinates with existing buildings and minimises visual impact. Second, I have applied conditions on proposed landscaping and cleaning of buildings not only to the appeal site, but also to other land within the appellants' landholding (and for that reason I have split the conditions into two schedules – schedule 2 contains conditions applying solely to the appeal site, and schedule 3 contains conditions applying to the appellants' landholding). I have power under section 41(1) of the Town and Country Planning (Scotland) Act 1997 to apply such conditions to land that is outside the appeal site but under the control of the appellants.

*Robert Seaton*

Reporter

## Schedule 1: approved application drawings

Plan 1 – Bro 001Rev C Landscaping  
 Plan 2 – PL 01 C – Site layout/block  
 Plan 3 – PL 02 Rev A – Floor Plan  
 Plan 4 – PL03 Rev A – Floor Plan  
 Plan 5 – PL04 Rev A – Elevations  
 Plan 6 – PL06 Rev A – Floor Plan  
 Plan 7 – PL07 Rev A –Elevations  
 Plan 8 – PL09 Rev A – Floor Plan  
 Plan 9 – PL10 Rev A - Elevations  
 Plan 10 – PL11 Rev A – Floor Plan  
 Plan 11 – PL12 Rev A – Elevations  
 Plan 12 – PL009 – Approved site layout for 13/00478/MS

## Schedule 2: Conditions applying to the appeal site

1. No development or work shall commence until a detailed specification for all proposed external materials, colours and finishes (including trade names) has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details.

Reason: In order to retain and/or protect important elements of the existing character and amenity of the site.

2. No development shall commence on any of the warehouses numbered 1-5 (inclusive) on approved drawing PL\_01C until detailed final hard and soft landscaping and maintenance plans for the area annotated on approved drawing PL\_01C as “proposed new landscaping areas”, prepared by a suitably qualified arboricultural consultant, have been

submitted to and approved in writing by the planning authority. Thereafter the approved plans shall be implemented in accordance with the approved details and agreed timetable submitted with the final landscaping and maintenance plans. Their implementation shall be supervised by a suitably qualified arboricultural consultant (appointed by the developer at their expense). Certificates of compliance shall be submitted by the developer to the planning authority following each site attendance by the arboricultural consultant and at the end of agreed phases. Maintenance thereafter shall be carried out in accordance with the approved maintenance plan.

For the avoidance of doubt, the final hard and soft landscaping and maintenance plan shall include:

- i. All earthworks including bunding and existing and finished ground levels in relation to an identified fixed datum point;
- ii. Exact details and timing of removal of the existing bund and woodland strip located in the south of the site
- iii. Details of the form and finish of the track within the landscaped area to the south of the site.
- iv. A plan showing existing landscaping features and vegetation to be retained;
- v. The location and design, including materials, of any existing or proposed walls, fences and gates;
- vi. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities;
- vii. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works; and;
- viii. Stages of supervision of the works by the arboricultural consultant;

Before submission of the landscaping and maintenance plans required by this condition to the planning authority, the developer must consult Network Rail on the proposed plans, and must submit evidence of having done so with the plans to the planning authority.

Any trees or plants provided for landscaping that die or are removed or damaged for whatever reason within the period from commencement of the development to a date ten years after the completion of the development shall be replaced in the next planting season with others of the same size and species.

The existing bund and landscaping/woodland located in the south of the site shall not be removed or altered in any way without the prior written approval of the planning authority. The landscape plan, including replacement bunding and planting, shall commence in the first planting season following removal of existing bunding and woodland, unless agreed otherwise in writing by the planning authority.

Reason: In order to ensure that a satisfactory scheme of landscaping and planting is agreed and implemented on site in order to provide adequate long-term screening of the development, and to ensure that the planting scheme does not impact on the safe operation of the railway network.

3. No development shall commence until the developer has provided to the planning authority evidence that it has notified Network Rail of details of all changes in ground levels, laying of foundations and operation of mechanical plant in proximity to the rail line.

Reason: As requested by Network Rail to ensure safe operation of the railway line.

4. No development shall commence until full details of all surface water drainage provision within the application site (which should accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Second Edition, or any superseding guidance prevailing at the time) have been submitted to, and approved in writing by, the Planning Authority. Thereafter, only the approved details shall be implemented and all surface water drainage provision shall be completed prior to the first occupation of any of the development.

Reason: To ensure that surface water drainage is provided timeously and complies with the principles of SUDS; in order to protect the water environment.

5. No development shall commence on any of the warehouses 6-9 (inclusive) until detailed hard and soft landscaping and maintenance plans for the site as shown on approved drawing BR0-001 Rev C (with the exception of the “proposed new landscape areas” referred to by condition 2 above), prepared by a suitably qualified arboricultural consultant have been submitted to and approved in writing by the Planning Authority.

For the avoidance of doubt, the final hard and soft landscaping and maintenance plan shall include:

- i. A plan showing existing landscaping features and vegetation to be retained;
- ii. All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities;
- iii. A programme for preparation, completion and subsequent on-going maintenance and protection of all landscaping works

Before submission to the planning authority of the landscaping and maintenance plans required by this condition, the developer must consult Network Rail on the proposed plans, and must submit evidence of having done so with the plans to the planning authority.

Reason: In order to ensure that a satisfactory scheme of landscaping and planting is agreed and implemented on site in order to provide adequate long-term screening of both the existing buildings at the Scotia House site and the development hereby permitted, and to ensure that the planting scheme does not impact on the safe operation of the railway network.

6. No development shall commence until a programme for maintenance/cleaning of the exterior of all the warehouses at the Scotia House site, including both those existing at the time of this permission and those hereby permitted, has been submitted to and approved in writing by the Planning Authority.

Reason: To ensure the buildings are adequately maintained in the interests of visual amenity given the visual prominence of the site, and to ensure consistency between existing buildings and the buildings hereby permitted.

### **Schedule 3: conditions applying to the appeal site and other land under the control of the appellant at Scotia House**

The following conditions 7 and 8 shall apply not only to the appeal site, but also to other land under the control of the appellant at Scotia House, Brora, as shown outlined with a broken red line and designated “new landscape and existing landscape maintenance area” on approved drawing PL\_01 Rev C:

7. The plans approved under condition 5 (in schedule 2 above) shall be implemented in accordance with the approved details and timetable submitted with the final landscaping and maintenance plans. Any trees or plants that, within a period of ten years from the completion of the development, die or - for whatever reason - are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that a satisfactory scheme of landscaping and planting is agreed and implemented on site in order to provide adequate long-term screening of both the existing buildings at the Scotia House site and the development hereby permitted, and to ensure that the planting scheme does not impact on the safe operation of the railway network.

8. The cleaning/maintenance programme for the exterior of the warehouses approved under condition 6 (in schedule 2 above) shall be implemented in accordance with the approved details.

Reason: To ensure the buildings are adequately maintained in the interests of visual amenity given the visual prominence of the site, and to ensure consistency between existing buildings and the buildings hereby permitted.

#### **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)).