



Decision by Claire Milne, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2153
- Site address: land 265 metres North East of Parks Farm, Parks of Inshes, Old Edinburgh Road, South Inverness
- Appeal by Tulloch Homes Ltd against the decision by The Highland Council
- Application for planning permission dated 15/01469/FUL dated 13 November 2015 refused by notice dated 7 March 2016
- The development proposed: re-mix of phase 1 to form 63 private dwelling and 39 affordable units consisting of flats and villas with associated works
- Application drawings: listed in Annex 3
- Date of site visit by Reporter: 12 October 2016

Date of appeal decision: 16 March 2017

Decision

I allow the appeal and grant planning permission subject to the 19 conditions listed at Annex 1 below. Attention is also drawn to the three advisory notes at Annex 2.

Reasoning

1. My notice of intention dated 25 November 2016, a copy of which is included at Annex 4, indicated that I was minded to allow the appeal and grant planning permission subject to the conditions listed at the end of the notice, and following the signing and registering or recording of a variation to the existing planning obligation under section 75A or a new planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement. The purpose of this was to ensure that financial contributions are made towards affordable housing and infrastructure and that this takes account of the proposed increase in the number of residential units on this site.
2. By email dated 14 March 2017, I received confirmation from the appellant that an application to modify the existing planning obligation had been approved by the council on 1 March 2017 and the notice of determination was acknowledged by the Registers of Scotland on 11 March 2017. On this basis, the council has confirmed that it is content for me to proceed to a final decision.
3. I am satisfied that the modified section 75 agreement addresses the matters set out in my notice of intention and will properly secure the appropriate contribution to the provision of affordable housing and infrastructure in connection with the proposed



development. In these circumstances I therefore grant planning permission subject to the conditions set out in Annex 1.

Claire Milne

Reporter

Annex 1: Conditions

1. On completion of the development for which planning permission is hereby granted, all roads and footpaths will be constructed and completed to a standard suitable for the grant of road construction consent.

Reason: In the interests of the free flow of traffic and public safety.

2. A street lighting design, which shall minimise light spill on to adjacent areas and skywards, shall be submitted to, and require the approval of the Planning Authority, prior to the commencement of road construction.

Reason: In order to protect the amenity of the area.

3. No development shall commence on site unless full details of all temporary surface water drainage measures designed to prevent flooding and contamination of existing watercourses during construction have been submitted to, and agreed in writing by, the Planning Authority and thereafter so implemented.

Reason: In order to ensure the proper provision of sustainable drainage facilities during construction.

4. None of the units hereby granted planning permission shall be occupied until arrangements for off-site trunk sewer connections and potable water storage infrastructure have been submitted and agreed with the planning authority and in consultation with Scottish Water, and have been completed in accordance with the approved arrangements.

Reason: In the interests of public health and to comply with Council policy.

5. Before development commences, a construction method statement shall be submitted to, and approved in writing by, the Planning Authority. This shall include the proposed location of the works compound, the means of screening the site, how the site will be developed and mitigation measures in terms of dust and noise for adjacent premises. This shall also include a Badger Protection Plan. Thereafter the construction method statement shall be implemented as agreed.

Reason: In the interests of residential amenity and to mitigate impacts on badgers during the construction phase of the development.

6. No development shall commence on site until a scheme for protecting properties adjacent to the development site from dust has been submitted to, and approved in writing by, the Planning Authority. The approved scheme shall be implemented before any part of the development is brought into use and thereafter be maintained.

Reason: In order to protect the environment and amenity of residents.

7. Permission is hereby granted on the basis that the development of the site shall include at least 25% of the housing units being affordable housing within the terms of the Planning

Authority's Development Plan Policy Guideline on Affordable Housing and to be agreed with the Council's Housing Development Team. For the purposes of this permission, affordable housing shall have the meaning assigned to it by the Affordable Housing Policy - that is, plots for the provision of or dwellings available in perpetuity for low-cost accommodation for local persons.

Reason: In order to meet the objectives of the Council's policy with respect to the provision of low-cost accommodation for local persons.

8. Before development commences on this phase a management and maintenance scheme for the roads, footpaths, parking areas, play areas and hard or soft landscaped areas that are not to be adopted by the Council shall be submitted to, and agreed in writing by, the Planning Authority. Thereafter the scheme shall be implemented as agreed.

Reason: In the interests of road traffic and pedestrian safety.

9. Prior to occupation of the first house, a scheme indicating appropriate locations throughout the development for suitable bin storage/collection points shall be submitted to and require the approval in writing of the Planning Authority. The approved details shall thereafter be implemented prior to occupation of the first house.

Reason: In the interests of road traffic safety.

10. No development shall commence unless a fully detailed scheme of landscaping for the site, including a scheme of maintenance has been submitted to and approved in writing of the Planning Authority. All planting thereby approved shall be undertaken in the first planting season following commencement of each phase of the development and shall thereafter be maintained in accordance with the approved scheme of maintenance. Any plants which, within a period of five years from the commencement of each phase of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the immediately following planting season with others of a similar size and species.

Reason: In the interests of amenity and in order to ensure that the development is adequately screened.

11. Prior to commencement of development, full design details of a scheme for a Sustainable Urban Drainage System (SuDS) shall be submitted to the planning authority for written approval. The residential units for which planning permission is hereby approved shall not be occupied unless the surface water drainage associated with the development including areas of hardstanding and the driveway, is installed and completed in accordance with the approved scheme and in accordance with SEPA's guidelines on SuDS.

Reason: To ensure a sustainable system of surface water drainage in the interests of public health and the avoidance of flood risk.

12. The residential units shall not be occupied unless the method by which foul drainage is to be provided on site has been implemented and completed in accordance with an approved scheme in consultation with Scottish Water.

Reason: In the interests of public health.

13. With effect from the date of this permission, no trees within the site shall be cut down, uprooted, topped, lopped or wilfully damaged in any way by the developers or their representative, unless otherwise agreed with the planning authority.

Reason: In order to ensure the protection of existing trees within the site.

14. No development shall commence on site until details have been submitted to, and approved in writing by, the Planning Authority in respect of a Tree Protection Plan and Method Statement in accordance with BS5837. Thereafter the Tree Protection Plan and Method Statement shall be implemented as agreed. Tree protection measures shall be overseen by an arboricultural consultant and certificates of conformity issued to the planning authority.

Reason: In order to ensure the protection of existing trees within the site.

15. Within 12 months from the date of this permission a detailed Tree Management scheme covering both wooded gullies shall be submitted to, and approved in writing by, the Planning Authority. Thereafter the Tree Management Scheme shall be implemented as agreed. For the avoidance of doubt, the Tree Management Scheme is to be subject to a formal review every 10 years.

Reason: In order to ensure the protection of existing trees within the site.

16. Prior to commencement of development, a detailed footpath specification (informal pedestrian links), including lighting and a timetable for implementation, shall be submitted to, and approved in writing by, the Planning Authority. Thereafter, the footpaths and lighting shall be constructed as agreed and in accordance with the approved timetable. For the avoidance of doubt, the specification shall include details of path linkages through the wooded gullies and to Inshes District Park.

Reason: In order to ensure good footpath links across the site.

17. The main west-east footpath connecting from Old Edinburgh Road South through the woodland gully and the open space between Phase 1 and Phase 5 shall be installed and completed upon substantial completion of the first 50 units of the development unless otherwise agreed in writing with the Planning Authority.

Reason: In order to ensure good footpath links across the site.

18. No development shall commence on this phase unless details of cycle storage facilities for residents of the flatted development have been submitted to, and agreed in writing by, the Planning Authority. Thereafter, the facilities shall be provided before first occupation of the flats. For the avoidance of doubt, this shall include provision for visitor cycle facilities all in accordance with Council standards.

Reason: In order to ensure provision of cycle facilities.

19. A detailed scheme for the areas of car parking associated with the flatted development shall be submitted to the planning authority for written approval. Thereafter, the parking areas should be constructed and demarcated in accordance with the approved scheme before first occupation of any units within the flatted development.

Reason: In order to ensure the timeous provision of parking facilities.

Annex 2: Advisory notes

- 1. 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)).
- 2. 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)).
- 3. 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).

Annex 3: List of application drawings

- 3988-02-002 Rev G - Location Plan
- 3988-02-003 Rev J - Overall Masterplan
- 3988-02-004 Rev J - Site Layout Plan A1
- 3988-02-005 Rev J - Site Layout Plan A0
- HLD-K204.15-SL-01 Rev C - Landscaping Plan
- HLD-K204.15-SL-02 Rev C – Full Landscaping Plan
- 3988-01-3STRA1S Rev A - Elevations, Sections and Floor Plans
- 3988-01-3STRA2S Rev A – Elevations and Sections
- 3988-01-3STRA3S-01 Rev A – Floor Plans
- 3988-01-3STRA3S-02 Rev A – Elevations and Sections
- 2865: 102/02 - Section Plan
- 2865: 115 - Drainage Plan
- 3988-02-020 - Bin and Cycle Store Details

Annex 4:

Planning and Environmental Appeals Division

Scottish Government
Riaghaltas na h-Alba
gov.scot**Appeal: Notice of Intention**

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Notice of intention by Claire Milne, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2153
- Site address: land 265 metres North East of Parks Farm, Parks of Inshes, Old Edinburgh Road, South Inverness
- Appeal by Tulloch Homes Ltd against the decision by The Highland Council
- Application for planning permission 15/04169/FUL dated 13 November 2015 refused by notice dated 7 March 2016
- The development proposed: re-mix of phase 1 to form 63 private dwelling and 39 affordable units consisting of flats and villas with associated works
- Application drawings: listed in schedule
- Date of site visit by Reporter: 12 October 2016

Date of appeal decision: 25 November 2016

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the 19 conditions listed, following the signing and registering or recording of: a variation to the existing planning obligation under section 75A; or a new planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997; or some suitable alternative arrangement, covering the matters listed in paragraphs 17 to 19 below.

Preliminary

With regard to the description of the development, the appellant and council have clarified that the proposal is for 69 private and 33 affordable units, consistent with the application drawings listed. This amendment does not alter my conclusions below.

With regard to the second reason for refusal, the council has clarified that the term 'architectural' rather than 'archaeological' should have been used and that there are no archaeological issues of concern.

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 issue in this appeal is the impact of the proposed development on the visual and residential amenity of the area; in particular, matters relating to the proposed 3-storey flats and their siting, height, form and design.

2. The proposed development is for a total of 102 units of mixed tenure and varied house type, and represents phase one of a total six-phase development with phases two, three and four completed and phase five nearing completion. Although there are some similarities between this proposal and the earlier approved scheme for the site, I consider there to be a few key differences. The current proposal represents an increase of 14 units in total and provides for a total of 68 flats - 36 within 3-storey blocks. It also introduces an amended internal road layout with a central open access road and provides for a larger area of landscaping across the Inshes Road frontage.

3. With the exception of the proposed 3-storey flats, the council indicates that the remainder of the scheme is acceptable. Therefore, I find the focus of the appeal to be on the siting, height, form and design of the proposed 3-storey flatted development. However, I accept that there are a number of other third party concerns and I deal with these in paragraphs 11 to 13 below.

Siting, height, form and design of proposed 3-storey flats

4. The appellant has produced layout, section and elevation drawings, which provide a visual comparison of the proposed scheme and that with planning permission. The 3-storey flats are to be sited in three blocks at the north-west part of the site, in a similar but not identical location to the 2-storey flats originally proposed. The comparison drawings show that the view from Inshes Road in terms of building heights would be comparable to that of the approved 2-storey flats, with only the very tops of the roof pitch or apex exceeding the original building height.

5. A landscaped area of between approximately 23 and 36 metres depth is proposed across the Inshes Road frontage. An area of open space containing recent tree planting also exists on the opposite side of Inshes Road. Inshes Road is a local distributor road leading to the Inshes and Milton of Leys housing areas. It has a wide, open characteristic providing no direct vehicle access to individual properties and flanked by areas of green space and the Inshes District Park.

6. The proposed 3-storey flats are of a similar style and materials to the houses and flats completed on other phases of the development. Therefore, I find the proposed design of the 3-storey flatted development would be in keeping with the local character.

7. The two main 3-storey flatted blocks are to be positioned on a ledge, similar to the approved 2-storey flats, but at a higher elevation and set back from the road by an additional 16 metres. The rear elevation of the flatted blocks would face Inshes Road. Consistent with other housing schemes in the area, the whole development would be accessed by an internal road network with no direct property access from Inshes Road. Based on the submitted drawings, I agree that the view from Inshes Road would be generally comparable with the approved scheme and the wide, open character of Inshes Road would be maintained.

8. There is a clear view of the site from the edge of the district park and from the pedestrian bridge over Inshes Road. From this elevated position, existing housing and the tall mature trees located within the adjacent gullies are also visible. These background features would help to mitigate the perceptible form and scale of the 3-storey flatted blocks and thus lessen their overall visual impact. With this context, I consider that the 3-storey flatted development would be sensitively sited and not have an adverse impact on the visual quality of the area. Furthermore, given the relative distance (around 100 metres) between the proposed development and the existing houses on Boswell Crescent, and the intervening trees, ground levels and proposed landscaping, the proposed 3-storey flats would not lead to any perceived overlooking or adverse impacts on residential amenity.

9. The ground levels within the appeal site gradually increase in height towards the southeast and behind the proposed 3-storey flatted development. The appeal site and the 2-storey housing being constructed on phase five, on the higher ground behind, are clearly visible from locations further away, such as from Sir Walter Scott Drive. From this aspect however the 3-storey flats would be seen in the context of an extensive and developing housing area and would not appear obtrusive or look out of place.

10. Drawing all the above conclusions together, I find the siting, height, form and design of the 3-storey flats, to be proportionate and in keeping with the general character of the area. Therefore, the proposal complies with Policy 28: Sustainable Design and Policy 29: Design Quality and Place-Making of the adopted Highland-wide Local Development Plan, 2012, which require new developments to be sensitively sited with a high quality design in keeping with the local character and designed to make a positive contribution to the architectural and visual quality of the location.

Other matters

11. A number of local concerns are raised with regard to increased traffic, drainage and flooding, safe routes to schools, open space provision, family housing need, insufficient community infrastructure and lack of primary school capacity.

12. Many of the above concerns appear to have arisen from the development of the earlier phases of the wider development. The council's committee report on the application responds to each of these matters and does not raise any outstanding issues subject to the application of appropriate planning conditions and developer contributions. With regard to school capacity, the council has clarified that although it recognises that there are immediate and longer-term capacity issues at both Inshes and Milton of Leys Primary Schools, provided the council receives developer contributions in line with council policy, school capacity is not a reason given for opposing the development.

13. Based on my own observations and the assessment reports submitted with the application, I agree with the council's conclusions on the above matters. In response to particular matters, in my conclusions set out below, I have included suitable planning conditions and the need for a planning obligation to secure appropriate developer contributions.

14. I have been referred to other flatted housing developments either built or approved on the south side of Inverness. While these provide useful examples of similar designs and

forms of 3-storey flats to that proposed, their siting and locational characteristics are not directly comparable. Every case must be considered on its merits and on this occasion, the examples cited merely lend support to the principle acceptance of 3-storey flats in the area.

Conclusions

15. 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 still justify refusing to grant planning permission. I have considered all the other matters raised but there are none that would lead me to alter my conclusions.

16. The council suggested a list of 21 planning conditions if I was to grant planning permission although it has since indicated that a play provision condition is not required, as an area has already been provided. I noted at my site inspection that a play area was established within the housing development on phase four, therefore I accept that this condition is not needed and that no further provision is required. In relation to the suggested condition that all land within the site shall be maintained in a tidy state until such time as it is to be built upon, I find that this lacks certainty and enforceability. Therefore it is not consistent with the terms of the tests set out in Circular 4/1998: *The use of conditions in planning permissions*. Within the council's suggested conditions, I have also removed the reference 'to the satisfaction of the planning authority', as this is too imprecise. Where necessary, I have replaced this statement with something more appropriate and consistent with the tests in the circular. With regard to the remaining conditions, I accept that these are worded properly and that they would meet the necessary tests.

17. A section 75 agreement is in place relating to the original outline planning permission for the wider development. The council indicates that its practice is to update legal agreements upon a grant of a new permission in respect of the same or part of the original application site. The council considers it necessary in this case to update the section 75 agreement to clarify that affordable housing and infrastructure contributions, as per the development brief for the site, should be based on the increased number of units. The appellant, in discussion with the council has clarified that their preference is for a section 75A application to be submitted to vary the terms of the original agreement and if this were not granted, a new section 75 agreement would be sought.

18. I note from the original agreement that the infrastructure contribution is defined as an index linked sum of £3,800 per market housing unit in respect of the provision and enhancement of education, traffic and transport and community facilities, including the district park. The mechanism to secure contributions towards these facilities already appears to be established and therefore I find that this matter could be negotiated accordingly. Affordable housing provision at 25 percent is also required in accordance with Policy 32: Affordable Housing from the local development plan and the related supplementary planning guidance.

19. I am satisfied therefore that it is reasonable that a planning obligation should be completed (or varied) to secure payment of contributions toward affordable housing and infrastructure as detailed above. This should take account of the proposed increase in the number of residential units on this site. I will accordingly defer determination of this appeal

for a period of up to 16 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement as may be agreed by the parties), to be completed and registered or recorded, as the case may be. If, by the end of the 16-week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

Claire Milne

Reporter

Schedule: List of drawings

[As set out in the decision notice - not repeated here]

List of conditions

[As set out in the decision notice - not repeated here]