

Agenda Item	7.4
Report No	PLS/009/20

## HIGHLAND COUNCIL

**Committee:** South Planning Applications Committee

**Date:** 28 January 2020

**Report Title:** 19/04117/S42: RPDL  
Land 145m North of Smiddy Bar, Lewiston, Drumnadrochit

**Report By:** Area Planning Manager – South

### Purpose/Executive Summary

**Description:** Section 42 application for non-compliance with Condition 1 of Planning Permission 17/05848/MSC Erection of 24 houses and associated infrastructure

**Ward:** 12 – Aird and Loch Ness

**Development category:** Local Development

**Reason referred to Committee:** Community Council Objection

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

### Recommendation

Members are asked to agree the recommendation to **Grant** planning permission as set out in section 11 of the report.

## 1. PROPOSED DEVELOPMENT

1.1 This application has been submitted under Section 42 of the Planning Act and relates to Condition 1 attached to planning permission 17/05848/MSC granted on 25 May 2018 in respect of the Kilmore Farm development. Planning Permission in Principle was granted by a Scottish Government appointed Reporter on 14 April 2015.

1.2 This phase of development comprises a total of 24 homes, 20 of which are semi-detached and 4 are detached. Condition 1 states:

*For the avoidance of doubt no more than 10 residential units shall be completed per year within this phase of the development following the submission of the notification of initiation of development for this phase.*

*A year is defined as a period of 365 days from the anniversary of the submission and approval of the initiation of development.*

**Reason:** *To ensure that the build out of the development avoids adverse impact on local services, the community, to control the rate of development and to accord with provisions of the land allocation DR6 in the Inner Moray Firth Local Development Plan (2015)*

1.3 As originally submitted the applicant had sought to remove the restriction on phasing. Through negotiation with the applicant, it has been agreed to re-word the condition rather than remove it. The applicant is now seeking to deliver 15 houses per annum rather than 10.

1.4 This application has been supported by the following information:

- Supporting statement; and
- Previously approved plans for the development.

## 2. PLANNING HISTORY

2.1	18.12.2012	12/04780/PAN - Erection of housing, affordable housing, homes for the elderly, mixed commercial uses, health car centre, public open space and associated infrastructure	Received
2.2	14.04.2015	13/03694/PIP - Mixed use development comprising housing, affordable housing, homes for the elderly, mixed commercial uses, health centre, public open space and associated infrastructure.	Planning Permission in Principle Granted
2.3	20.09.2017	16/05708/FUL - Erection of 20no. dwellings	Planning Permission Granted

2.4	06.12.2017	17/01702/FUL - Retail unit (Class 1) with four additional units (Class 1,2,3 and Sui generis- Hot food takeaway) with associated service yard, parking, coach bay, landscaping	Planning Permission Granted
2.5	07.09.2017	17/02492/MS - Submission of information addressing Matters Specified in Conditions of Planning Permission 13/03694/PIP	Matters Specified Approved
2.6	25.05.2018	17/05848/MS - Submission of Matters Specified in Conditions 1, 3, 4, 17, 20, 23 and 38 of Planning Permission 13/03694/PIP - Erection of 24 houses and associated infrastructure	Matters Specified Approved
2.7		19/00415/MS - Submission of Matters Specified in Conditions 1, 3, 4, 15, 17, 20, 22, 23, 24, 25, 27, 28, 29, 33, 37, 38 and 39 of Planning Permission 13/03694/PIP - Erection of 13 detached houses, 12 semi-detached houses, 8 terraced houses, 8 flats, 2 mid terrace houses and associated infrastructure works and landscaping.	Pending Consideration

### 3. PUBLIC PARTICIPATION

3.1 Advertised: Unknown Neighbour

Date Advertised: 11.10.2019

Representation deadline: 25.10.2019

Timeous representations: 0

Late representations: 0

### 4. CONSULTATIONS

4.1 **Glenurquhart Community Council** object to the application. It considers that the development plan requirement of 10 houses per annum on this site should not be removed. It notes that local facilities are at or near capacity. It has suggested that they would be content for the allocations and developments to be managed across the major sites within Drumnadrochit.

### 5. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application:

#### 5.1 Highland Wide Local Development Plan 2012

28 - Sustainable Design

29 - Design Quality and Place-making

32 - Affordable Housing

34 - Settlement Development Areas

51 - Trees and Development  
56 - Travel  
57 - Natural, Built and Cultural Heritage  
58 - Protected Species  
59 – Other important Species  
60 – Other Importance Habitats  
61 – Landscape  
63 – Water Environment  
64 - Flood Risk  
65 - Waste Water Treatment  
66 - Surface Water Drainage  
72 – Pollution  
75 – Open Space  
77 – Public Access

## 5.2 **Inner Moray Firth Local Development Plan 2015**

Drumnadrochit SDA

DR6 - Land south west of Coiltie Crescent (Mixed Use – Residential, Business Community, Retail.

Policy 2 – Delivering Development

## 5.3 **Highland Council Supplementary Planning Policy Guidance**

Construction Environmental Management Process for Large Scale Projects (August 2010)

Flood Risk and Drainage Impact Assessment (Jan 2013)

Highland Historic Environment Strategy (Jan 2013)

Highland's Statutorily Protected Species (March 2013)

Managing Waste in New Developments (March 2013)

Onshore Wind Energy Supplementary Guidance (November 2016)

Open Space in New Residential Developments (Jan 2013)

Physical Constraints (March 2013)

Public Art Strategy (March 2013)

Standards for Archaeological Work (March 2012)

Sustainable Design Guide (Jan 2013)

Trees, Woodlands and Development (Jan 2013)

## 6. **OTHER MATERIAL POLICY CONSIDERATIONS**

### 6.1 **Scottish Government Planning Policy and Guidance**

National Planning Framework 3 (2014)

Scottish Planning Policy (2014)

Creating Places (2014)

Ness Development Brief (2007)

## **7. PLANNING APPRAISAL**

- 7.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

### **Determining Issues**

- 7.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

### **Planning Considerations**

- 7.3 The principle of the development has been established through the previous permission. This is an application to modify a condition. In order to address the determining issues therefore, Committee must consider the extent to which the proposal continues to comply with development plan policy and take into consideration any other material considerations.

### **Development plan**

- 7.4 Development Plan Policy has not changed since the determination of the matters specified in conditions application. The key issue therefore is whether the amendment to the condition applied for would result in the development being incompatible with the Development Plan. The remainder of this report will consider the modification proposed and assess its compatibility with the Development Plan.
- 7.5 Allocation DR6 - Land south west of Coiltie Crescent in the Inner Moray Firth Local Development Plan (IMFLDP) is clear that phasing should be limited to a maximum of 10 houses per annum. Policy 2 of the IMFLDP sets out that allocations require to be delivered in line with the developer requirements of the plan. Paragraph 4.107 of the of the IMFLDP sets out that phasing should be controlled to “ensure the village is not swamped by a surge in building and to ensue the character of the village is maintained and even enhanced by the quality of new buildings, their layout and their good connectivity.”

### **Modification to Condition 1**

- 7.6 The condition was attached to the matters specified in conditions approval to ensure that the build out of the development avoids adverse impact on local services, the community, to control the rate of development and to accord with provisions of the land allocation DR6 in the Inner Moray Firth Local Development Plan (2015).
- 7.7 The applicant has submitted a supporting statement to suggest that the amenity of residents within the village will be adversely affected as a result of a prolonged construction period for this phase, and future phases, of the development. It is accepted that construction does have an impact on amenity of existing properties however this needs to be balanced against the impact of development on the wider community.

- 7.8 The school roll forecast shows that with this development at a build rate of 10 houses per annum then Glen Urquhart Primary School will breach 100% of its capacity in 2026/27. If a build rate of 15 units per year is applied then it would breach 100% capacity in 2025/2026. This however includes development on all sites on allocation DR5. Overall, therefore it is not considered that increasing phasing within the site to 15 units per annum would have a fundamental impact on the school roll at Glen Urquhart Primary. There are no capacity issues at Glen Urquhart High School.
- 7.9 Impacts on other community infrastructure are more difficult to quantify as they do not have capacities as such and are outwith the control of the Council in terms of their delivery. However, officers are in discussions with NHS Highland in relation to healthcare provision through the review of the IMFLDP.
- 7.10 From the commencement of development in September 2018 a total of 3 houses have been completed. While this rate of development is slow, the applicant anticipates the pace of development will increase as the infrastructure has now been completed.
- 7.11 On balance it is considered that an increase in the number of units to be completed within each year to 15 units is acceptable. This would reduce the length of time the development would have on the amenity of existing and future residents, while also ensuring that the number of houses within the site would not “swamp” the village.

#### **Other material considerations**

- 7.12 It is worth highlighting that an application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. As there was only one condition attached and all other matters are covered by the Planning Permission in Principle, it is not considered that any further conditions are required.

#### **Matters to be secured by Section 75 Agreement**

- 7.13 As this is an application for non-compliance with conditions against an approval of matters specified in conditions, it is not competent to secure any developer contributions through this application.

### **8. CONCLUSION**

- 8.1 All relevant matters have been taken into account when appraising this application. While not all proposed modifications as sought by the applicant are acceptable, following negotiation with the applicant the suite of conditions proposed to be attached to would result in the development remaining consistent with the policies and provisions of the Development Plan.
- 8.2 The application for non-compliance with Condition 1 of the extant approval of matters specified in conditions accords with the development plan and is acceptable in terms of all other applicable material considerations.

## **9. IMPLICATIONS**

9.1 Resource: Not applicable

9.2 Legal: Not applicable

9.3 Community (Equality, Poverty and Rural): Not applicable

9.4 Climate Change/Carbon Clever: Not applicable

9.5 Risk: Not applicable

9.6 Gaelic: Not applicable

## **10. RECOMMENDATION**

**Action required before decision issued** N

**Subject to the above**, it is recommended that planning permission be **GRANTED**, subject to the following:

### **Conditions and Reasons**

1. For the avoidance of doubt no more than 15 residential units shall be completed per year within this phase of the development following the submission of the notification of initiation of development for this phase.

A year is defined as a period of one calendar year from the anniversary of the commencement of development.

**Reason:** To ensure that the build out of the development avoids adverse impact on local services, the community, and to clarify the phasing of the development in accordance with provisions of the Inner Moray Firth Local Development Plan (2015).

### **REASON FOR DECISION**

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

### **TIME LIMIT FOR THE IMPLEMENTATION OF THIS PERMISSION**

The development to which this planning permission in principle relates must commence no later than TWO YEARS from 25 May 2018.

An application or applications for the approval of all outstanding matters specified in conditions attached to planning permission in principle ref. 13/03694/PIP must be made no later than whichever is the latest of the following:

- i. The expiry of THREE YEARS from the date upon which planning permission in principle ref. 13/03694/PIP was granted;

- ii. The expiry of SIX MONTHS from the date on which an earlier application for the requisite approval was refused; or
- iii. The expiry of SIX MONTHS from the date on which an appeal against such refusal was dismissed.

The development to which planning permission in principle ref. 13/03694/PIP relates must commence no later than TWO YEARS from the date on this decision notice, or, in the case of approval of different matters on different dates, from the date of the requisite approval for the last such matter being obtained, whichever is the later.

## **FOOTNOTE TO APPLICANT**

### **Initiation and Completion Notices**

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

### **Flood Risk**

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

### **Scottish Water**

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.



## **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

[http://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/101/permits\\_for\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2)

## **Mud and Debris on Road**

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

## **Construction Hours and Noise-Generating Activities**

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact [env.health@highland.gov.uk](mailto:env.health@highland.gov.uk) for more information.

## **Protected Species – Halting of Work**

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: [www.snh.gov.uk/protecting-scotlands-nature/protected-species](http://www.snh.gov.uk/protecting-scotlands-nature/protected-species)

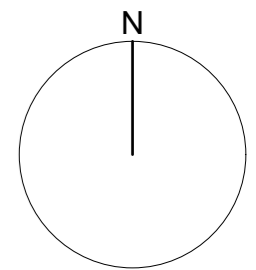
Designation: Area Planning Manager – South  
Author: Simon Hindson, Team Leader – Strategic Projects  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 - Site Layout Plan – 323-PL-002





**Phase 4+5**  
43 Houses

**Phase 3**  
24 Houses



do not scale from this drawing • dimensions and levels to be checked on site by the contractor • all dimensions in millimetres unless otherwise noted • all levels in metres unless otherwise noted

revisions & notes

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Client RPDL	Project Housing development at Drumnadrochit		
Scale 1:500	Date Sept 19	Drawn AT	Status Planning
Drawing Title Section 42 Application Plan Phase 3			Dwg No. <b>376-pl-007</b>