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Notice of Intention by Nick Smith, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2230
- Site address: Land 50 metres north of The Hermitage, St Olaf Manor, Cawdor Road, Nairn, IV12 5EE
- Appeal by Albyn Housing Society Ltd against the decision by The Highland Council
- Application for planning permission 20/00493/FUL dated 31 January 2020 refused by notice dated 1 June 2020
- The development proposed: erect new development of 10. no amenity 'FIT' homes comprising 6 bungalows and 4 private entry flats in communal garden area with 5 metre acoustic barrier and associated parking and services.
- Application drawings: listed in schedule one: drawings approved
- Date of site visit by Reporter: 24 August 2020

Date of notice: 17 December 2020

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## Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the conditions listed below, following the completion of a further bat survey carried out by an appropriately qualified professional in line with the recommendations of the original survey (ALB017) and to at least the same standard as ALB015, and the receipt of comments on its findings from the planning authority and NatureScot, as discussed in paragraph 14, and subject also to the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997, or some suitable alternative arrangement, covering the matters listed in paragraph 5.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan comprises the Highland Wide Local Development Plan (HWLDP) (2012) and the Inner Moray Firth Local Development Plan (IMFLDP) (2015). I have considered all of the policies, sections and supplementary guidance referred to me which are before me in the core documents library as follows:

- HWLDP Policy 28 Sustainable Design
- HWLDP Policy 29 Design Quality and Place Making
- HWLDP Policy 31 Developer Contributions
- HWLDP Policy 34 Settlement Development Area
- HWLDP Policy 51 Trees and Development
- HWLDP Policy 56 Travel



- HWLDP Policy 58 Protected Species
- HWLDP Policy 65 Waste Water Treatment
- HWLDP Policy 66 Surface Water Drainage
- IMFLDP Nairn Section
- Supplementary Guidance: Access to Single Houses and Small Housing Development (May 2011)
- Supplementary Guidance: Developer Contributions (March 2013)
- Supplementary Guidance: Flood Risk and Drainage Impact Assessment (January 2013)
- Supplementary Guidance: Sustainable Design Guide (January 2013)
- Supplementary Guidance: Trees, Woodland and Development (January 2013)

2. Having regard to the provisions of the development plan the main issues in this appeal are the location and design of the appeal proposal and its implications for developer contributions, woodland, protected species and matters relating to noise from the adjacent sawmill and the related effectiveness and amenity impacts of the proposed acoustic barrier.

### Location

3. The appeal proposal is for 'FIT' homes that would be occupied by people with various medical needs and would incorporate technology that can assist in monitoring their conditions whilst allowing them to live independently. This location has been chosen due to its proximity to Nairn County Hospital (adjacent north) and the Manor Care Centre (adjacent south) which forms a cluster of health and social care facilities, including the Manor Care Home opposite (south). A related proposal is extant on Area A (adjacent east) but is not part of this appeal.

4. The appeal site is within the Nairn settlement boundary (IMFLDP page 65) but not within the Nairn South Strategic Master Plan Area. It is not protected for habitat, wildlife or other purposes and is not known to be at risk of flooding. It is within at least ten minutes walking distance of Nairn town centre. Overall the location and purpose of the proposal reflect the relevant parts of HWLDP Policies 28, 29, 34 and 56.

### Developer Contributions

5. The appellant agrees to pay an upfront contribution of £10,220 (£1,022 per unit) towards the expansion of Nairn Leisure Centre. The report of handling states that if planning permission was granted this balance would be cleared prior to a decision being issued. However, since I would grant any permission on behalf of Scottish Ministers, I instead defer planning granting planning permission pending a legal agreement between the appellant and the council or some other appropriate arrangement.

6. The report of handling confirms that no other developer contributions would be sought. With the imposition of the above planning obligation the appeal proposal would reflect HWLDP Policy 31 and the associated supplementary guidance.

### Woodland

7. The arboricultural impact assessment (ALB20) and Tree Protection Plan (ALB09) show that most of the trees on the appeal site are proposed for removal; predominantly category C and U trees (the lowest categories of tree value). Report of Handling (THC001) paragraph 8.9 explains that the site layout was slightly remodelled prior to submitting application 20/00493/FUL in order to avoid removal of a Wellingtonia that was previously the subject of objections.

8. The landscape plan (ALB11) proposes replanting 37 new trees along the western boundary and a mixture of flowering garden shrubs and hedging throughout the site. The Design Statement (ALB22) shows that planting along the western boundary, tree retention in the adjacent woodland (east) and the mature trees in the adjacent hospital grounds (north) would retain the woodland backdrop and setting of the appeal site.

9. The council's forestry officer does not object but proposes conditions 2 to 6 to ensure that only the works proposed would be carried out and that other trees would be protected. These conditions would also require prior approval of the landscape plan and maintenance programme in advance of development, including replanting of 50 heavy standard sized trees. The appeal proposal would therefore fulfil HWLDP Policies 51 provided that those conditions are imposed.

#### Protected species

10. The submitted protected species survey (ALB017) found no evidence of protected species but considered some potential for bats and recommended a stage 2 bat assessment. The stage 2 bat assessment (ALB015) covered both the appeal site and the extant site adjacent. I focus on the results for the appeal site. ALB015 Appendix B concludes that the appeal site contains only one tree with moderate bat roost potential (T2129) but no evidence of bat use was otherwise found. All other trees on the appeal site were found to have low bat roost potential. It also recommended more detailed survey work be carried out between May and September.

11. However, both surveys were over 18 months old at the time when the appeal was submitted and no views had been provided by Scottish Natural Heritage (SNH) (now rebranded as NatureScot) at that stage. I can accept that the council's report of handling was content that NatureScot would be likely to issue the relevant protected species licences since, at that time, the surveys were less than 18 months old.

12. Following my request NatureScot confirms that its standard guidance states that bat licence applications should include a survey that is not more than 18 months old. The age of the surveys is, therefore, now a factor that would prevent it from having the confidence to issue the necessary licences. However, it also confirms that updating the survey (which I take to mean the bat survey ALB015), in line with the original survey, would overcome this particular issue. I am therefore satisfied that an updated bat survey of at least the same standard and scope as ALB015 carried out by an appropriately qualified professional and following the recommendations of ALB017 would overcome the issue of survey age.

13. The appellant suggests using a suspensive condition to achieve this. However, NatureScot highlights the risks that a granted planning permission becomes unusable or increases the risk of committing an offence. These criticisms could be levelled at any suspensive condition. However, using a suspensive condition would require me to assume

that the appeal proposal is acceptable in terms of the relevant LDP policies and be confident that NatureScot would issue the respective protected species licences if required. In the absence of the updated survey results I can do neither.

14. I therefore defer my final decision on this matter until a new bat survey has been carried out as set out above. Once the new survey has been submitted by the appellant I will seek the views of the council and NatureScot to inform my conclusions, as would have been the case had the surveys not been over 18 months old.

15. The council had proposed condition 7, a suspensive condition to require prior approval of the species protection plan in advance of development. No evidence suggests this to be an inappropriate mechanism to secure these outcomes in the event of an up to date bat survey. I would therefore impose this condition were I to allow the appeal. Doing so would enable the appropriate measures to be set out and approved in advance of the development taking place in the interests of safeguarding the nature conservation interests of protected species and/or their habitats.

### Design

16. The proposed homes are designed for people with long term health conditions or at increased risk as a result of ageing. They would incorporate technologies to support independent living and identify health changes for early intervention. Some properties could also serve as transitional accommodation to support early discharge from hospital. Overall, the measures aim to reduce hospital admission and care package costs. These aspects of the design are supported by NHS Highland, a partner in the appeal proposal.

17. All homes would be single floor accommodation with eight properties accessed from the ground floor and two via external steps to the first floor. They are not specifically aimed at disabled users but this format does not suggest use by these groups would be inhibited. The homes would be manufactured off site and then installed on site; reducing the build time and associated disturbance. No evidence suggests I should doubt the resource consumption credentials of the appeal proposal to any extent that would justify refusal.

18. Scottish Water advises there to be sufficient water and waste water treatment capacity to enable connection to the public supply and drainage networks. Each property would have a dedicated concrete ring soakaway and permeable block paving would be used on the proposed carpark. This reflects HWLDP policies 65 and 66.

19. Access would be taken from the existing access road and junction with Cawdor Road and 15 car parking spaces (including for disabled users) would be provided in a dedicated carpark. One interested party is concerned about increased traffic adversely affecting vulnerable people living at or using adjacent facilities. However, I am not convinced that traffic from 10 properties would result in the effects which are of concern. The council's transport planning team does not object and confirms that fifteen parking spaces is adequate and that the proposal is consistent with the appropriate Roads Guidelines. This does not suggest conflict with HWLDP (2012) Policy 56 and associated supplementary guidance.

20. The site is not part of a conservation area or protected for any other cultural heritage reasons that would suggest its design to be inappropriate. Being surrounded by woodland

(existing and proposed) on three sides also provides a degree of visual seclusion that could limit adverse visual impacts to or from adjoining uses.

21. On balance, the outcomes facilitated by the proposed design support the intentions of HWLDP Policies 28 and 29 and the associated Sustainable Development Supplementary Guidance. I am also content that this could be reinforced by condition 8 in the event of approval.

#### Residential amenity relating to noise

22. The adjacent sawmill operator considers the appellant's noise impact assessment (ALB018) to have been carried out incorrectly and to have underestimated the level of sawmill related noise experienced at the appeal site. It is concerned that the appeal proposal would result in future residents making noise complaints that would adversely affect its operations. If correct this could also mean that residents of the appeal site would be exposed to unacceptable noise levels were the appeal to proceed. Various technical criticisms have been made of ALB018 which I investigate to determine whether the appeal proposal would be acceptable from the perspective of noise amenity. I consider the impacts on sawmill operations separately in paragraphs 108 to 112 below.

23. Below I explore the methodological criticisms made of ALB018, including whether it should have used British Standard BS4142 as well as others. I then consider technical criticisms of ALB018 and then what its conclusions mean for the appeal proposal.

#### -Use of British Standard (BS) BS4142

24. The sawmill operator's noise consultant believes that ALB018 should have used BS4142:2014 and thus omits the components and calculations necessary to correctly quantify noise impacts at the appeal site. It submits the more recent BS4142:2019 but no evidence suggests this to be the incorrect version of the document.

25. The appellant and the council argue that it is not necessary to use BS4142. In memorandum ZS01138 dated 15 February 2018 the council asked the appellant to use the Planning Advice Note (PAN) 1/2011 Noise and Planning: Technical Advice Note (TAN).

26. I first consider the appropriateness of BS4142 versus the TAN methodology used in ALB018. If I find that the TAN methodology is appropriate for this appeal I can dismiss all criticisms relying on the original contention favouring BS4142. The sawmill operator's noise consultant also makes several other methodological criticisms of ALB018 which I consider in the subsequent paragraphs.

27. The council, appellant and sawmill operator's consultant all agree that BS4142 is not mandatory but that various conventions and standards have become accepted across industry. Having read the evidence before me I find no reason to disagree. There are various different standards or methods available but the circumstances for each to be used differs and depends on the development in question. I must therefore use my judgement informed by the evidence to conclude which method is most appropriate for this appeal.

28. I agree with the sawmill's consultant that the Royal Environmental Health Institute Scotland (REHIS) Note 017: Noise Guidance for New Development and Professional Practice Guidance: New Residential Development each suggest using BS4142 to assess

the noise impacts for new residential development where industrial or commercial noise already exists. If that was all then I would have to agree that BS4142 should be used.

29. However, BS4142 sub clause 8.5 states that where noise sensitive receptors are introduced and there is an extant industrial/commercial sound, it ought to be recognised that this industrial/commercial sound forms a component of the acoustic environment. The council appears to share this view and, on balance, I agree because the sawmill operates overnight, albeit at different levels to the day time. In such circumstances BS4142 sub clause 8.5 states that other guidance and criteria, in addition to or alternative to BS4142, can also inform the appropriateness of both introducing the new noise sensitive development and the extent of required noise mitigation.

30. This means that BS4142 itself acknowledges that circumstances exist, such as for the appeal proposal, where it may not offer the best or most appropriate methodology. Here some judgement is therefore required based on the evidence that is available.

31. The appellant refers me to the Association for Noise Consultants (ANC) Technical Note Section 3: Terms and Definitions. There it identifies concerns with using BS4142 for the introduction of noise sensitive development into environments with extant industrial/commercial noise that is constant or continuous. This is the case in the appeal proposal based on the evidence submitted. In particular the ANC document points to a risk of underestimating the contribution of legitimate commercial residual sources to the background sound level because this could potentially lead to unrepresentatively adverse outcomes.

32. As an aside the council contends that following the BS4142 methodology and applying the suggested penalties, identified for the appeal site by the sawmill, would likely demonstrate the sawmill to be presently a noisy neighbour to sensitive users adjacent, such as the existing care home. I agree with the council that this is unlikely to be what the sawmill wished to imply and I also have no data to corroborate this either way. However, it does illustrate to me the potential risks from using BS4142 that are stated in paragraph 31 above.

33. The council also refers me to criticisms of BS4142 in TAN Appendix 1. These are based on BS4142:1997 and relate to its use as an external based assessment of internal noise. The council presents this as one of its reasons why it considered the TAN to be more appropriate in this instance.

34. The evidence of all three parties makes clear that BS4142 is a relative method of calculating noise impact. It compares the rating level (including the application of correction levels) with background noise. However, I must recognise that the council has presented the appellant with predetermined noise thresholds in memorandum ZS01138, which is before me and quoted in ALB018. If one wishes to compare present noise levels at the appeal site with the threshold levels this question appears to favour the TAN methodology. Indeed that is what the council asked for in memorandum ZS01138.

35. The appellant argues that the council's noise thresholds are based on the present acoustic environment. These thresholds originate from the Nairn South master plan, as the council confirms. The sawmill's evidence explains that this masterplan was devised in recognition of development proposals at Nairn South and the existing noise from the sawmill. The appellant contends this to mean that the thresholds are already quite stringent

to account for the existing noise environment with the sawmill. The evidence persuades me that the thresholds are a response to the existing noise environment, including the sawmill operations. No party advises me differently. Either way this evidence does not suggest I should favour BS4142 over the TAN.

36. The appellant has provided evidence from Renfrewshire Council covering its respective noise thresholds, which differ to those of the council in memorandum ZS01138. I am prepared to accept that it reflects the circumstances I have already established in the paragraph above. It also illustrates the point highlighted by the council that criteria noise levels or thresholds are determined by local authorities as set out in TAN paragraph 3.8. The same is recognised in REHIS Note 017. TAN paragraph 3.8 also states that the same local authority will also determine the appropriate methodology to be used for the noise impact assessment. That was the case in this instance where the council established both the criteria noise levels and the methodology in memorandum ZS01138.

37. Even so, the question posed by the council to the appellant was, effectively, whether the appeal site is presently exposed to noise levels that exceed the council's thresholds and, if so, what mitigation could be incorporated to resolve this and how effective would it be. I am persuaded that the TAN methodology is appropriate to answer that question. Given BS4142 sub clause 8.5 and paragraph 36 (above) I am content that it was reasonable for the council to ask for the TAN methodology to be used as opposed to BS4142.

38. The sawmill consultant contends that the TAN methodology applies mainly to transport related noise. However, TAN paragraph 2.1 states that it is applicable in 'various common situations'. The purpose of the TAN is to support the analysis of noise for noise generating developments and noise sensitive development. This persuades me that the TAN is not exclusively for use in circumstances where only transport noise is experienced. I acknowledge that some examples in TAN Chapter 3 include transport noise but others in that chapter do not. Besides these are illustrative examples and I find nothing to suggest those which include transport noise could not be applied to the appeal circumstances. The fact that these do not directly illustrate the appeal circumstances does not preclude use of the TAN based on the evidence before me.

39. The sawmill consultant also argues that the scales and descriptions for magnitude of impact presented in ALB018 Table 4.1 are transport related. This appears to rely partly on the arguments in the paragraph above that I dismiss. It may also relate to the column headers which presently show  $L_{Aeq\ 16hr}$  for daytime and  $L_{Aeq\ 8hr}$  for night time. In my experience those time periods are used in transport. However, I accept the appellant's point that these are typing errors that should read 1 hour for day time and 15 minutes for night time. I therefore read ALB018 Table 4.1 as if the typing errors have been corrected and am content that it does not refer to transport circumstances.

40. My reading of ALB018 Table 4.1 suggest that it translates the council's thresholds in memorandum ZS01138 using the rules set out in TAN Table 2.4. That appears appropriate and no compelling evidence appears to question this. I accept that it makes clearer sense when read with the heading corrections for time periods discussed above. On balance I am not convinced that ALB018 is using transport related criteria and descriptors in error. I am therefore content to accept the ALB018 Table 4.1 as appropriate to the intended purpose.

-Appeal decision PPA-340-2117

41. The sawmill's consultant argues that PPA-340-2117 establishes a precedent for using BS4142 when residential uses are introduced close to existing industrial noise emitters. I am not obliged to reach the same conclusions as other appeal decisions. I consider this appeal on its own merits.

42. The appeal before me is adjacent to an industrial noise emitter but is also adjacent to existing medical, care and residential uses and includes an acoustic barrier proposed to mitigate the industrial noise. PPA-340-2117 was adjacent a dual carriageway, no noise barrier was proposed between the appeal site and industrial noise emitter and debate included whether the closing of windows was a suitable remedy to screen internal residential environments from industrial noise. That issue is not apparent in this appeal.

43. In the appeal before me the council has not objected to the appellant's noise impact assessment, supports the appellant's methodology and reaches similar conclusions to the appellant in its own noise survey. No noise assessment has been carried out by the sawmill operator using BS4142. In PPA-340-2117 the appellant used different methodologies for its own noise assessments. The factory had carried out its own assessment using BS4142 and the council and factory operator both contested the appellant's use of BS8233 instead of BS4142.

44. Appeal PPA-340-2117 is contextually different to the appeal that is before me. Appeal decision PPA-340-2117 does not definitively support the sawmill consultant's contention that BS4142 was established as the methodology that should be used exclusively when residential uses are proposed near extant industrial noise emitters. Reference in PPA-340-2117 to another appeal decision, that is not before me, similarly does not corroborate the sawmill consultant's view on this matter. I also find no evidence to contradict my findings in paragraph 29 (above) relating to BS4142 sub clause 8.5.

45. Therefore no compelling evidence convinces me to change my earlier conclusions that BS4142 is one method but its use is dependent on circumstances and it is not necessarily appropriate in all instances. Overall, it was appropriate to ask for and carry out a noise impact assessment using the TAN methodology instead of BS4142. I now turn to the other criticisms and issues relating to ALB018.

-boundary treatments

46. ALB018 section 8 states that when noise measurements were taken the western boundary with the sawmill was made up of a stone wall (approximately 3 metres in height) and a closed board wooden fence (approximately 2 metres tall). The council's report of handling notes that the 2 metre fence remains in place but that the wall has been replaced by a slightly lower closed board wooden fence. No parties dispute this and I saw the both fences on my site inspection. The appellant states that this new fence forms the boundary between the sawmill and the existing care home opposite (south) the appeal site. No parties contest this.

47. I asked the appellant, council and sawmill if this change in boundary treatment would affect the conclusions of ALB018 and, if so, what this might mean. The sawmill's consultant states that if the appellant's noise measurements (ALB018) and the council's noise survey



were both undertaken when the same boundary treatment was in place then there would be no implications on those measurements. No other parties contradict this.

48. The appellant contends that the replacement fence was put in place by the sawmill but the sawmill itself does not provide any dates for this work, answering my question on this matter with 'unknown'. The council states that its own noise survey (4 February 2020) was undertaken prior to removal of the stone wall. This persuades me that the replacement boundary treatment took place after that point. Although the appellant estimates removal to have been January 2020 the council's account suggests it would have been later. It is also understood that the action was undertaken by the sawmill on behalf of itself and its neighbour, the existing care home. Whilst no evidence is presented it would seem odd for both parties to agree to new boundary treatment that led to a worse acoustic situation given the sawmill's own concerns about noise complaints.

49. Overall, since both the appellant's noise measurements (ALB018) and the council's own noise survey were conducted with the same boundary treatment in place this does not suggest any implications for the results presented in ALB018. No evidence convinces me to conclude differently.

#### -Measurement equipment positioning and plot movement

50. ALB018 Appendix 2 states that Measurement Point 1 was positioned 15 metres from the western boundary at the proposed location of the western elevation of plots 1 and 2. There it references drawing 4441-02-100 which shows these locations. However, the submitted version of that drawing (ALB03) shows slightly different locations for some plots and, using the scale provided shows the distance between the western elevation of plots 1 and 2 to the western boundary as being between 8 and 9 metres rather than 15 metres.

51. The appellant states that Measurement Point 1 was 15 metres from the western boundary in order to escape the noise shadow of the existing boundary treatment. I accept that the existing boundary treatment would have some attenuation properties and that this action was a prudent means to ensure results that did not underplay the noise levels experienced at the appeal site.

52. The appellant has subsequently provided estimates of the difference in noise levels at 15 metres and 9 metres from the western boundary. On balance those are relatively similar with an average result being approximately 1 dB higher for the 9 metre position compared with the 15 metre position. I find no compelling evidence to suggest I should dismiss this evidence. Had it not been presented the assumptions in the paragraphs above would otherwise have led me to assume noise levels would be relatively similar at both positions. Although I consider the specific outputs of ALB018 separately below, on this matter I agree with the appellant that the differences presented (15 metres and 9 metres) would not fundamentally alter the conclusions reached by ALB018.

53. The appellant's explanation for remodelling of the site layout after the first application is consistent with what I have already recognised in paragraph 7 (above). From a noise perspective moving all plots closer to the sawmill would appear to bring them closer to the noise source. However, it would also bring them and their external space closer to the noise shadow of the existing boundary treatment. Similarly, it would also bring them further into the noise shadow of the proposed acoustic barrier, which the appellant contends would

increase the noise sheltering effect of that barrier. No convincing evidence is provided to suggest I should find differently.

54. I am therefore content that the results in ALB018 are not made inaccurate as a result of the matters considered above. This persuades me that using this noise impact assessment is acceptable. No evidence convinces me to conclude differently.

-Upper floor noise reflection

55. The sawmill consultant is correct that ALB018 does not cover noise reflection from the upper floor façade of the two storey block (Plots 5 to 8). The appellant argues that reflections would be of minor and insignificant contribution with no bearing on the overall conclusions. The council agrees and confirms that it did not ask for this in the assessment. Therefore, no convincing evidence allows me to conclude that noise reflection from the upper floor would have significantly affected the conclusions reached by ALB018.

-Noise characteristics

56. The sawmill's consultant argues that ALB018 fails to consider low frequency noise. I agree that it does not contain evidence that low frequency noise is present at the appeal site but this may not be the same as failing to consider it.

57. The sawmill provides me with a 115 page NANR45 document entitled 'Proposed criteria for the assessment of low frequency noise disturbance' (Revision 1 December 2011) by the University of Salford Manchester. This document explains the technical evaluation and findings of a comparison of low frequency noise curves and methods used by various European countries.

58. The sawmill's consultant states that page 60 of the above document includes a curve that is used across EU countries in the planning stage. However, no curve is presented on page 60 of that document. Instead the text summarises the technical analysis (above) and goes on to find Sweden's curve to be the most appropriate albeit with some weaknesses. If the sawmill consultant is referring to the Swedish curve then I am content that pages 60 to 62 appear to identify this but no graph is shown.

59. The appellant provides me with the 25 page NANR45 document entitled 'Procedure for assessment of low frequency noise complaints' (Revision 1 December 2011) also by the University of Salford Manchester. This document appears to be the procedures for implementing the criteria and technical findings derived from the larger NANR45 document provided by the sawmill's consultant (above). A curve is presented in section 4.1 of this document that forms part of the procedures. It is unclear whether or is not this is the curve to which the sawmill consultant refers but I am prepared to accept that it could be.

60. Irrespective, the appellant is correct that section 1.1 of this NANR45 procedures document states that; the procedures are not intended as a means of predicting when disturbance might occur, for example in a planning situation, and would not be reliable to use as such. Since the procedures document dismisses its own suitability in a planning situation, such as consideration of this appeal, then I also dismiss it for the same reason.

61. The sawmill consultant states that there are a range of low frequency noise outputs on the sawmill site, for example from engines. However, based on its various analyses of

the sawmill the council identifies only the operation of the kilns as a source with some potential element of low frequency noise. I am also aware that the kilns operate almost constantly and at 50% overnight and at weekends. On balance, the council's judgement is that there is unlikely to be significant risks posed by low frequency noise sources. No compelling evidence convinces me to disagree with the council's analysis.

62. I note that pages 60 to 62 of the NANR45 document referenced by the sawmill consultant also state the importance of the environmental health officer's judgement based on local knowledge, since it states that exceeding any threshold may not always constitute a nuisance. Had I therefore accepted the sawmill consultant's view of NANR45, this still suggests I should give credence to the judgement of the council's environmental health team. Irrespective, I have dismissed the role of the NANR45 documents here for the reasons set out in the paragraphs above. No other evidence convinces me to reach a different conclusion to the council for low frequency noise.

63. The sawmill consultant argues that no spectral analysis has been carried out of the noise from the sawmill. I find no evidence of such analysis in ALB018. However, the council states that no such analysis is required by the TAN, or indeed by BS4142. I also find no such requirement in either document and so find no reason to disagree with the council. The council is content that noise characteristics can be determined using a subjective assessment of the noise source. This is what ALB018 does, in accordance with the TAN.

64. The appellant directs me to ALB018 sections 3, 5 and 7. These identify the different types of noise that were apparent at the appeal site; including recognition of noise features such as tonality, intermittency or impulsivity. It also identifies those besides the sawmill which originated from adjoining users such as the care home and from traffic on Cawdor Road.

65. I visited the appeal site at 3pm and at 10pm. I did not have any noise monitoring equipment. At 3pm I heard the faint murmur of activity at the sawmill, perhaps the kilns and other equipment. I also heard vehicle movements including reversing alarms; these made a Pssst! sound rather than a beep! I also heard the occasional thud of what I thought to be timber being dropped into place. At night little noise was audible from the sawmill but I am prepared to accept that the kilns were operating at 50% (as stated in the evidence) and that vehicles occasionally move around the sawmill site. My experience appears to reflect that recorded in ALB018.

66. The sawmill consultant has listed various activities which occur at the sawmill but all appear to be referenced in some way by ALB018, except for the wood chipper. The evidence suggests that the wood chipper was not in operation during either the appellant's noise impact assessment or the council's noise survey. The council did not object on the basis of the wood chipper being absent from ALB018. Whilst the wood chipper is used with a relatively predictable regularity the evidence convinces me that is only occasional (approximately every 6 weeks) and would not form part of the day to day typical noise experiences of sawmill operations by the appeal site.

67. On balance, the evidence does not suggest a failure of ALB018 to comply with the chosen TAN methodology or that the appellant has failed to properly consider the sawmill noise characteristics experienced at the appeal site. Overall, the council was content with

the qualitative assessment of noise characteristics. No evidence convinces me to find differently to the council.

-Users of the appeal site

68. The sawmill's consultant argues that ALB018 fails to consider the needs of the different people who would live on the appeal site, despite being asked to by the council. However, this is not the same as what the council asked for. Council memorandum ZS01138 dated 15 February 2018 states in arrow-bullet point five that:

'A Qualitative assessment – This should provide additional information which may support the quantitative assessment or indicate that the classification of the magnitude of the noise impact needs to be modified. In addition to considering the acoustic nature of the noise, as the supporting documents states as the outdoor environmental [environment] is a key part of enhancing the residents well-being, the specific needs of the future residents should be considered as part of the qualitative assessment.'

69. ALB018 identifies the appeal proposal as being of 'high' sensitivity to noise since it is made up of residential receptors. This does not strike me as unusual or incorrect as it appears to appropriately recognise the users of the site in general terms. No parties dispute this categorisation of sensitivity.

70. ALB018 section 3 specifically recognises that the appeal proposal would cater for people with various medical needs. It would be extremely difficult to present detailed analysis of every single set of circumstances or combination of medical needs that would possibly use the appeal proposal. Memorandum ZS01138 does not ask for that to be done or any further detail besides consideration of noise levels in the external environment.

71. ALB018 section 7 (Qualitative Assessment) considers the noise that affects the external environment of the appeal site, including intermittent noise. I have already considered matters relating noise characteristics (paragraphs 56 to 67 above).

72. The sawmill consultant has presented various information relating to dementia and raises concern that such matters have not been covered by ALB018. These matters are not identified in ALB018. However, the council advises me that the adjacent uses to the appeal site (and sawmill) include a care home and a hospital. I agree that this is the case. In the case of the care home the council remarks that it already caters for residents with dementia and other conditions. The council has also advised that the appeal site presently serves as an amenity garden to the care home. This suggests to me that the appeal site and its immediate surroundings are already used by vulnerable groups, including those experiencing dementia (and perhaps other conditions). I recognise that the matters argued by the sawmill relate in some part to the use of BS4142 and application of its noise penalties. I have already considered the use of BS4142 in paragraphs 24 to 45 (above) and particularly in paragraph 32 for noise penalty issues. Overall, no evidence suggests I should find differently to the council on this matter.

73. The qualitative assessment (ALB018 section 7) uses TAN Table 2.5 and suggests the perception of noise from the existing noise environment would fall between the descriptors 'Negligible' and 'Minor'. Both the qualitative and quantitative evidence in ALB018 do not suggest significant risks of sleep disturbance since the sawmill operates

limited activities at night and also weekends. Having read the descriptors in TAN Table 2.5 I am content that 'Moderate' is not an appropriate descriptor in this case for those reasons and that elements of 'Minor' covering sleep disturbance also have a low risk of occurrence. Other elements of the 'Minor' descriptor from TAN Table 2.5 appear plausible, as do those for the 'Negligible' descriptor. I therefore agree with ALB018's qualitative analysis of this matter. Overall this suggests that ALB018 is correct not to modify its quantitative findings based on its qualitative assessment of noise using the TAN methodology.

74. ALB018 has therefore considered the sensitivity level of the proposed use and recognised, as asked to by the council, the existing external implications from the existing noise environment from a qualitative perspective and drawn conclusions. It has also considered the subsequent noise impacts with mitigation. The council itself has not objected to this analysis. Although I cover the specific conclusions reached by ALB018 separately below, this does not suggest to me that there has been a failure to consider the users of the appeal proposal in the manner asked for by the council in memorandum ZS01138.

#### -Calculations used in ALB018

75. The sawmill consultant criticises some of the calculations used in ALB018. Several cover background noise but I find those to relate to the application of BS4142, which I have already dismissed above.

76. The appellant has separated out traffic noise on Cawdor Road from sawmill noise using a theoretical calculation. The sawmill consultant prefers an actual measure at a time when the sawmill is not operating. However, the evidence suggests that the sawmill operates in some way for 24 hours. The sawmill consultant states that readings could be taken in the evening after operations cease and prior to clean down. However, this is likely to coincide with peak evening commuting times. Irrespective, no parties have provided convincing evidence that the appellant's calculation is wrong or gives incorrect results.

77. The sawmill consultant provides its own calculation but it relies on the premise that  $LA_{90}$  40 dB (not  $LA_{eq}$  as previously stated) is a reasonable estimate for background noise. However, as an estimate, this is no more useful or accurate than the appellant's calculation, which at least uses two measured data sets. I am therefore satisfied that no better calculation or value has been presented than that carried out by the appellant.

#### -Length of time for the assessment measurements

78. The sawmill consultant does not consider that sufficient time was taken to measure the full range of activities that take place on the sawmill site. However, the evidence above for 'noise characteristics' suggests that all noise sources listed by the sawmill were covered in ALB018 except for the wood chipper. I have already satisfied myself that the wood chipper is an occasional and short term use that is not representative of typical day to day operations and noise. The council did not object on the basis of the time taken by the appellant's noise impact assessment and no other evidence suggests I should.

79. The appellant's noise impact assessment (and also the council's noise survey), each almost a year apart, took a similar length of time and recorded similar results. Each also preceded the COVID restrictions that began in March 2020, which could have subsequently restricted operations and noise output. No other convincing evidence of content

deficiencies is provided. On balance, I am therefore content that the evidence sufficiently recognises and measures the noise activity affecting the appeal site and that it is not necessary to conduct a new survey over a longer time period.

-Performance of the proposed acoustic barrier

80. The sawmill's consultant contends that using a 4 metre receiver height (ALB018 Appendix 4) instead of 5 metres would not accurately predict acoustic barrier performance for plots 5 to 8 first floor. Elevation drawings (ALB04) confirm that 4 metres is approximately the middle of the first floor and that 5 metres is approximately the top of the first floor windows.

81. The appellant states that 4 metres is an industry standard height for first floor noise level predictions based on Directive 2002/49/EC. The council considers that 4 metres is reasonably representative of first floor height. Based on ALB04 I agree with the council. No compelling evidence persuades me that the top of the first floor window better represents the height of the first floor than the 4 metres used by ALB018.

82. All parties agree that no noise measurements were taken from within the sawmill boundary. The sawmill consultant considers this to be necessary to fully understand all noise sources and how well the proposed acoustic barrier would perform. ALB018 appears to recognise this. The appellant contends that access to the sawmill was not available and that council memorandum ZS01138 seeks a survey of 'current ambient and background noise levels at appropriate locations within the proposed development site' (my emphasis).

83. The council also identifies several advantages of carrying out detailed measurements within the sawmill grounds. I find no reason to disagree with the council. However, the critical question, as sought in memorandum ZS01138, is what noise levels would be experienced at the appeal site, as such the best place to measure these would be the appeal site itself. The appellant was able to answer that question without taking readings from the sawmill site and the council did not object to its doing so. This does not suggest a procedural or methodological failure.

84. The sawmill consultant doubts that the proposed acoustic barrier would attenuate noise by 10 dB. This appears to be informed by the two matters above (paragraphs 80 to 83). On the first I have concluded that 4 metres reasonably represents first floor height. On the second it was not essential to measure noise within the grounds of the sawmill in order to understand whether thresholds at the appeal site would be exceeded. I consider assumptions about the acoustic barrier performance below.

85. I must also accept the council's (and also the appellant's) other evidence on this matter. The council explains that the effectiveness of the proposed acoustic barrier will depend on its length, height and position relative to the noise source and its material.

86. No parties challenge the effectiveness of the proposed acoustic barrier material. There is therefore no evidence to suggest I should not accept that as appropriate for its intended purpose. The barrier is proposed to be positioned between the appeal site and the sawmill, which in simple terms would introduce a screen between the noise sensitive development and the noise generating development (depending on height and length).

87. The barrier is proposed to be 5 metres high, which is the same as the top of the upper most window on the highest properties and would otherwise be higher than all other proposed plots. Based on ALB03 the proposed acoustic barrier would run from the northern boundary with the hospital south, along the entire western boundary of the appeal site, just over 70 metres to approximately 24 metres beyond the southern elevation of plots 1 and 2.

88. The council explains that noise emanating from the south/southwest would be less well attenuated. I find no reason to disagree but this was not sufficient to convince the council's environmental health team to object. No evidence suggests I should find differently to the council or treat the length of proposed acoustic barrier beyond the southern elevation of plots 1 and 2 (above) to be inadequate.

89. The council explains that a noise barrier providing partial visual screening from a noise source can be assumed to attenuate noise by 5 dB and total screening by 10 dB, based on BS 5228-1:2009 'Code of practice for noise and vibration control on construction and open sites' – Part 1: Noise Section F2.2.2.1c. The appellant shares this view. No evidence suggests I should disagree or find that the proposed acoustic barrier would fail to provide total visual screening for the appeal site from the sawmill site.

90. Whilst measurements within the sawmill grounds could have offered a more detailed understanding of acoustic barrier performance, this was not essential. No other convincing evidence justifies an alternative performance assumption. I therefore accept that the proposed acoustic barrier would attenuate noise by 10 dB, as stated in ALB018.

#### -Overall findings on criticisms of ALB018

91. On balance, I am persuaded that the appellant's noise impact assessment (ALB018) has been carried out using an appropriate methodology (the TAN) including an appropriate subjective consideration of the noise characteristics experienced at the appeal site. I am content that the only outstanding matter is the occasional use of the wood chipper, which I consider to be predictably regular but short term and otherwise atypical of day to day sawmill noise. I am content that the criticisms regarding calculations or detailed methodological matters have either been dismissed on the basis that BS4142 is not necessary or have otherwise been dismissed for appropriate reasons in my analysis above. I therefore accept ALB018 as an appropriate noise impact assessment and consider its findings (below).

#### -Findings from ALB018

92. No parties disagree with ALB018 that the appeal site would experience night time internal and external noise levels that would be below the respective thresholds stipulated by the council in memorandum ZS01138. The evidence in ALB018 confirms this. The only matter of contention is therefore the threshold and results for day time external noise.

93. ALB018 shows that present external day time noise levels at the appeal site would be  $L_{Aeq}$  48 dB. This is 3 dB above the  $L_{Aeq}$  45 dB threshold stipulated by the council. The council's noise survey recorded higher levels of  $L_{Aeq}$  54 dB. The council is content to accept that its noise survey reaches relatively similar results to those of ALB018, no evidence convinces me to disagree. This gives me further confidence in accepting the results of both ALB018 and the council's noise survey. No other noise assessment is

before me. Despite the disagreements regarding methodology (above) no parties actually dispute the general conclusion of either ALB018 or the council survey; namely that external day time noise levels at the appeal site presently exceed the council's threshold.

94. The conclusions of both surveys convince me that some form of noise mitigation is an essential pre-requisite for the appeal proposal to proceed. That mitigation must be capable of attenuating external day time noise at the appeal site to levels that do not exceed the council's threshold. I must also acknowledge that the same mitigation would also attenuate night time noise levels outside (and possibly inside) for noise originating to the west, although the evidence (above) suggests that there is no requirement to do so.

95. The appellant proposes a five metre high acoustic barrier as mitigation to attenuate noise emanating from the sawmill. Based on my analysis above it would attenuate noise by 10 dB. Using the noise levels identified in ALB018 ( $L_{Aeq}$  48 dB) and its subsequent mitigation calculations then external day time noise levels at the appeal site would be reduced to  $L_{Aeq}$  38 dB. This would be 7 dB below the council's  $L_{Aeq}$  45 dB noise threshold. Recognising the estimates discussed in paragraph 52 (above), the 1 dB variation identified by the appellant would not alter the overall conclusion here with regard to the effectiveness of the proposed acoustic barrier.

96. If the council's noise survey is used ( $L_{Aeq}$  54 dB) then the proposed acoustic barrier would attenuate external day time noise levels at the appeal site to  $L_{Aeq}$  44 dB. This would be 1 dB below the council's noise threshold of  $L_{Aeq}$  45 dB. It would be incorrect to apply the appellant's 1 dB variation (above) to the council's survey because it was derived using the conditions measured for ALB018 and distance assumptions may not accurately apply to the council's survey. Had such a comparison been valid the result would not have exceeded the threshold.

97. I must recognise that none of this evidence means that the sawmill operations would be inaudible all of the time or that the appeal site would be silent as a result of the proposed acoustic barrier. However, by either consideration (above) the proposed acoustic barrier would sufficiently mitigate external day time noise levels at the appeal site to avoid them exceeding the council's threshold. In so doing it would therefore ensure that the council's requirements have been met.

98. I am therefore content that the appeal proposal would comply with the provisions of HWLDP (2012) policy 28 provided that the condition proposed by the council's environmental health officer is imposed to require installation of the proposed noise barrier is completed prior to occupation of the proposed housing. Doing so would prevent residents being exposed to unacceptable noise levels prior to completion of the barrier.

99. The sawmill operator seeks conditions that were previously sought by the council's environmental health team. However, the request for those conditions was not amongst the council's environmental health team's comments on planning application 20/00493/FUL. Given the evidence above relating to acoustic barrier performance the aspirations of those conditions appear to have been achieved since they essentially sought to fulfil the council's noise thresholds. Overall, I see no evidence to justify imposing those conditions.

100. The council's response to my procedure notice included several documents that had already been considered. It also included various responses to the previous planning application. This illustrates a sequence of events but does not affect in any way my



consideration of the council's memorandum ZS01138 or its response to planning application 20/00493/FUL (now this appeal). I am therefore satisfied that no parties have been prejudiced by this.

### Proposed acoustic barrier visual impacts

101. The remaining matter would be visual amenity impacts resulting from the proposed acoustic barrier. It was this that led the council to refuse the original application. No evidence suggests the proposed barrier would obstruct an important view and I saw none on my site inspection. However, it would contribute to visual screening of the sawmill plant and operations for residents of the appeal proposal were it to proceed.

102. In scale terms the height of the barrier would differ little from the existing and proposed trees on the western boundary or indeed those mature trees proposed for retention (east and north). This does not suggest any substantive height difference from the status quo. I agree with report of handling (THC001) paragraph 9.1, which recognises that the trees that are proposed to be planted along the western boundary (in front of the barrier) would grow to a similar or greater height than the barrier itself. These matters could be controlled through council proposed condition 5 which requires prior approval for the landscape plan and maintenance regime. I would impose this condition were I to allow the appeal. Although I would do so for the primary purpose of ensuring there is sufficient tree planting in the interests of amenity I recognise the role this would have in visual amenity terms.

103. The proposed planting along the western boundary would also screen the barrier and diminish its own visual signature. Views from the rear bedrooms of numbers one to four (facing the acoustic barrier) would be of lawns, shrubs, the proposed trees and the barrier. Views from the front of numbers nine and ten would be the same but with the courtyard garden and plots one to four (opposite) in the foreground. In each case the barrier would be one background feature amongst several background and foreground features.

104. THC001 paragraph 8.24 states that the barrier could be painted green. Doing so would, in my view, diminish its visual signature when fronted by trees and shrubs. These matters could be controlled through council proposed condition 8 which requires prior approval for external paint/stain finishes. I would impose this condition in the interests of visual amenity were I to allow the appeal.

105. ALB016 shows shading and daylight at different times of day throughout the year with the proposed acoustic barrier and without it but with the existing trees. In each case shading and daylight would not be identical but would also not be substantively dissimilar.

106. Overall, the proposed acoustic barrier would screen visual impacts from the adjacent sawmill but would itself be screened by proposed planting and would bring limited differences to shading compared with the present trees. On balance, the above factors persuade me that the barrier would not harm individual and community residential amenity so significantly as to justify refusal on the basis of HWLDP Policy 28.

### Development plan overall

107. Overall, I am satisfied that the appeal proposal would be consistent with the relevant provisions of the development plan to which I am referred, including the respective supplementary guidance, or could be made so through the imposition of conditions.

### Section 41A of the Town and County Planning (Scotland) Act 1997 (the Act)

108. The sawmill's original concerns (paragraph 22 above) are that the appeal proposal would introduce residents into an area that experiences unacceptable levels of noise and that this would result in complaints that would curtail sawmill operations. As the sawmill consultant explains, I must consider section 41A of the Act. The appeal site has the potential to be a noise sensitive development as set out in section 41A (1).

109. Section 41A(1)(a) requires the planning authority (me on behalf of Scottish Ministers) to take particular account of whether the development (appeal proposal) includes sufficient measures to mitigate, minimise or manage the effect of noise between the appeal proposal and existing businesses in the vicinity (the sawmill) of the development (the appeal proposal).

110. I have considered the sawmill consultant's criticisms of the appellant's noise impact assessment but concluded that ALB018 has been properly carried out using the appropriate methodology. I have also concluded that the proposed acoustic barrier would be sufficient to mitigate sawmill noise so that noise levels experienced at the appeal site would not exceed the respective council thresholds for noise.

111. I cannot guarantee that there would never be noise complaints by residents but that is not what section 41A of the Act seeks. The evidence suggest that the appeal proposal mitigation is sufficient to make the appeal proposal acceptable in terms of Section 41A of the Act. This is because the mitigation burden is met by the appellant and not the sawmill, consistent with Section 41A(2)(b). No compelling evidence convinces me differently.

112. I must also recognise that whilst the appeal site is not presently used for residential purposes it is an amenity garden space. The sawmill also has residential neighbours already, including some who are elderly with a variety of health and social care needs. The sawmill therefore already has various noise related responsibilities to its existing neighbours and the appeal site. There is no further evidence to suggest I should change my conclusions regarding Section 41 of the Act.

### Scottish Planning Policy (SPP) 2014

113. The Council's Report of Handling (THC001) makes reference to SPP paragraph 259 which covers flooding. It does so amongst a series of other standard or advisory paragraphs at the end of THC001. I find nothing in SPP paragraph 259 to suggest that my earlier conclusions regarding flood risk and compliance with the development plan to be incorrect or worthy of revision. No other matters in SPP are referred to me.

### Interested parties

114. Interested party objections are mostly concerned that the appeal proposal would introduce noise sensitive receptors adjacent to the sawmill and result in complaints, costs

and operating difficulties for the sawmill. However, only the council, the sawmill itself and the appellant provide detailed technical evidence relating to noise. I have considered these matters above relating to the noise impact assessment and section 41 of the Act. No interested party evidence persuades me to conclude differently.

115. All other matters raised by interested parties have already been covered in the preceding paragraphs. No interested party evidence persuades me to alter the conclusions I have already reached.

## Conclusions

116. I conclude that a planning obligation restricting or regulating the development or use of the land should be completed in order to deliver the necessary upfront contribution described in paragraph 5 (above).

117. I also conclude that an updated bat survey, carried out by an appropriately qualified professional in line with the recommendations of the original survey (ALB017) and to at least the same standard as ALB015, should be completed, as set out in paragraphs 10 to 15 above.

118. I will accordingly defer determination of this appeal for a period of up to 26 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.

119. If, by the end of the 26 week period, copies of:

- the relevant obligation with evidence of registration or recording, and,
- the updated bat survey

have not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

*Nick Smith*

Reporter

## Schedule one: drawings approved

Plan 1 - 4441-02-LOC REV A – Location Plan  
Plan 2 - 4441-02-100 REV D – Site Layout Plan  
Plan 3 - SL-01 Rev A – Landscape Plan  
Plan 4 - 4441-01-100 Rev A – Type 1 Floor/Elevation Plan  
Plan 5 - 4441-01-102 – Type 3 Floor/Elevation Plan  
Plan 6 - 4441-01-050 – General Plan- Acoustic Fence Details  
Plan 7 - 4441-01-003 B – Visual Information

## Schedule two: Conditions

**1.** Prior to first occupation of the residential properties hereby approved the applicant shall have installed a suitably constructed 5 metre high acoustic barrier along the western boundary of the site shared with John Gordon and Son Sawmill as per the location shown on the approved drawing no. 4441-02-100 and as per the specification detailed within the approved Acoustic Fence Details, drawing no. 4441-01-050.

**Reason:** In order to ensure that the barrier is installed timeously in advance of residents occupying the development, in the interest of residential amenity.

**2.** With effect from the date of this permission, no trees other than those specifically agreed are to be cut down, uprooted, topped, lopped (including roots) or wilfully damaged in any way, without the prior written permission of the Planning Authority.

**Reason:** To ensure the protection of retained trees during construction and thereafter.

**3.** Prior to any site excavation or groundworks, all retained trees are to be protected against construction damage using protective barriers located as per the Tree Protection Plan and Arboricultural Method Statement, and in accordance with BS5837:2012 (Trees in Relation to Design, Demolition & Construction). Barriers shall remain in place throughout the construction period and must not be moved or removed without the prior written approval of the Planning Authority.

**Reason:** To ensure the protection of retained trees throughout the construction period.

**4.** A suitably qualified Arboricultural consultant shall be employed by the applicant to ensure that the Approved Tree Protection Plans and Arboricultural Method Statement (AMS) are implemented to the agreed standard. Stages requiring supervision are set out in the AMS for the written agreement of the Planning Authority and certificates of compliance for each stage are to be submitted for approval.

**Reason:** To ensure the protection of retained trees throughout the construction period.

**5.** No development shall commence until a revised detailed Landscape Plan and maintenance programme has been submitted to and approved by the Planning Authority. The revised Landscape Plan shall include the planting of at least 50 heavy standard sized trees and shall be implemented in full during the first planting season following commencement of development or as otherwise agreed in writing by the Planning Authority.

**Reason:** In order to ensure that there is sufficient tree planting the interests of amenity.

**6.** A suitably qualified landscape consultant shall be employed at the applicants' expense to ensure that the Landscape Plan is implemented to the agreed standard. Stages requiring supervision are to be agreed with the Planning Authority and certificates of compliance for each stage are to be submitted for approval.

**Reason:** To ensure that the tree planting is undertaken in accordance with the approved details in the interest of visual amenity.

7. No development shall commence until a Species Protection Plan has been submitted to, and approved in writing by, the Planning Authority, in consultation with NatureScot (formerly Scottish Natural Heritage). For the avoidance of doubt this shall provide details and measures to protect and mitigate habitat and species including bats and nesting birds within and adjoining the application site. Thereafter the development shall be undertaken in accordance with the approved Species Protection Plan.

**Reason:** As bats and birds are European Protected Species and the Species Protection Plan is required to ensure that natural habitats conservation interests in the area are maintained and enhanced.

8. No development shall commence until details of all external paint/stain finishes (including manufacturer product codes) have been submitted to, and approved in writing by the Planning Authority. Thereafter, development shall progress in accordance with these details.

**Reason:** In the interest of visual amenity and to ensure that the development remains in keeping with its surroundings.

### **Schedule three: 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)).