



## Appeal: Notice of Intention

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Notice of Intention by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2274
- Site address: land between The Heights and El Palomino, Ladystone, Inverness
- Appeal by Mr G Macdonald against the decision by The Highland Council
- Application for planning permission in principle 20/01442/PIP dated 2 April 2020 refused by notice dated 1 June 2022
- The development proposed: formation of house plot in lieu of plot 2 (17/05112/PIP)
- Application drawings: listed in schedule at the end of this notice
- Date of site visit by Reporter: 25 November 2022

Date of notice: 30 November 2022

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### Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the conditions listed below, following the revocation of planning permission in principle 17/05112/PIP.

### Preliminary matters

1. This proposal seeks to replace a house that was granted planning permission in principle (17/05112/PIP) on another site approximately 140 metres to the south west. The planning history for that other site is quite complex and it has been suggested by an objector that permission 17/05112/PIP should not have been granted, as an earlier permission (13/00071/S42), which the 2017 application sought to renew, had already expired.
2. It is not necessary for me to investigate that issue, as my consideration of the current application requires that I consider whether the permission upon which this proposal seeks to rely (17/05112/PIP), remains extant. The question of whether that permission should have been granted, is not before me.
3. Planning permission in principle 17/05112/PIP would ordinarily have expired. However, the council and appellant agree that its lifespan was extended by emergency regulations that were introduced during the Covid 19 pandemic. An application for approval of matters specified in conditions (22/04503/MS) was validated on 3 November 2022 and I conclude that there remains a valid planning permission in principle, the proposed revocation of which is of critical importance to the acceptability in principle of the current proposal.
4. It is not unheard of for a prospective developer to seek to replace an existing planning permission with an alternative, and this is not, as some objectors contend, an example of an improper incentive or a conflict with circular 3/2012. This is not a proposal to vary permission 17/05112/PIP but to replace it with a new permission. Therefore, the

expectation of section 32A of the Town and Country Planning (Scotland) Act 1997 that there be no substantial change in the description of the development, is irrelevant to this case.

## **Reasoning**

5. 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 2012 (the HWLDP) and the Inner Moray Firth Local Development Plan 2015 (the IMFLDP). There is also non-statutory supplementary guidance, which does not have development plan status but is material to this decision. This includes "Access to single houses and small housing developments" and "Housing in the countryside."

### The principle of development

6. The site lies within the countryside, specifically in the defined Inverness hinterland, where HWLDP policy 35 only permits housing development in exceptional circumstances (none of which applies to this proposal). However, as this proposal would replace an extant planning permission in principle (17/05112/PIP) for a single dwelling on a nearby site, this conflict with policy 35 needs to be seen in the context of there being no proposed net increase in housing numbers.

7. Due to its relatively isolated location in relation to an occupant's day to day needs and the absence of public transport, future residents of the proposed house are almost certain to rely upon the private car for most journeys. This, and the fact that this is a greenfield site, means the proposal would perform poorly when assessed against the sustainable design expectations of HWLDP policy 28. Once again however, the existence of an extant permission nearby (which would perform equally poorly in this regard) means this is not a reason to resist the principle of development, provided that the earlier permission is revoked.

8. I conclude that the existence of an extant permission for which this proposal would be a replacement, means the principle of development cannot reasonably be resisted. Therefore, I must focus on the details of what is now proposed, bearing in mind the 'in principle' stage of the scheme.

### Access issues

9. Having regard to the provisions of the development plan, I find the main issue in this appeal to be the adequacy of vehicular access to the site. I have paid particular attention to the safety and amenity of drivers, pedestrians and cyclists and to concerns expressed by Network Rail about increased use of a railway overbridge.

10. The site is somewhat challenging to access by car, as it does not have a direct connection to the public road network. Two route choices are available: via Ladystone Road to the west; or via Leachkin Brae to the east. Both routes involve unadopted roads / tracks. Had there not been an extant planning permission, which it is proposed to revoke in exchange for the current proposal, these substandard accesses might, in themselves, have provided sufficient grounds to resist a new house here.

11. The western access crosses the railway via an overbridge, which is subject to a weight restriction. Network Rail objects to this proposal on railway safety grounds unless

the developer provides upgrades to the alternative (eastern) access route so as to encourage vehicles to take that route in preference, thereby avoiding any intensification in use of the overbridge. It also states that construction traffic and emergency vehicles must not use that overbridge.

12. The appellant questions whether there is, in fact, a structural integrity issue with the railway overbridge, as Network Rail's list of bridges describes it as "functionary". It is unclear what is meant by the term "functionary" in this context, although I note that Network Rail describes its condition as "entirely safe". Network Rail's comments suggest it is capable of accommodating the traffic levels for which it was designed, but perhaps not a significant increase. The key consideration in this regard is the fact that this proposal represents a replacement of an approved nearby housing plot rather than an additional source of traffic.

13. In addition to the railway overbridge issue, the western access is narrow and features relatively tight bends, where forward visibility is restricted. There is a condition attached to the existing planning permission in principle requiring all access to be taken from the other direction. Subject to a similar stipulation with this proposal, there should be no intensification in the use of the western access. Some local residents predict that future occupants would find the western route more convenient, regardless of any improvements that were made to the eastern alternative. However, if that were in breach of a planning condition, it could be enforced against, should the council consider that to be expedient.

14. Bearing those factors in mind, I have no concerns over the effect of the proposal on the western access and overbridge. A construction traffic management plan could ensure that all such traffic used the eastern access. However, I agree with the appellant that it would not be lawful or appropriate to seek to prevent, via a planning condition, emergency vehicles using the western route.

15. The eastern access route is via a poorly surfaced road through woodland, which my site inspection revealed was popular with walkers and cyclists. Some of the route is a designated Core Path. From the proposed plot to Leachkin Brae is approximately 1.2 kilometres. The track is narrow with few opportunities for vehicles to pass.

16. The extant planning permission in principle (17/05112/PIP) requires the developer to extend the track in front of The Heights and El Palomino to link with the track to Leachkin Road, but does not require any resurfacing works. However, in connection with the current proposal, the appellant is willing to resurface the entire length of the access track from the proposed house plot to its junction with Leachkin Brae, with the aim of improving its suitability and discouraging use of the western route. This is consistent with the request from Network Rail and from the council's transport planning team, for developer-funded improvements to this route.

17. The council had previously sought a more extensive programme of access improvements in connection with the current proposal, including improvements to the carriageway, passing places and surfacing of the adopted section of Leachkin Brae, carriageway surfacing, drainage and passing place formation on the track between the site and Leachkin Brae and the installation of a locked gate across the track to the immediate west of the proposed plot (thereby physically preventing access via Ladystone Road and the overbridge).

18. The appellant states that he has a right of access over the access track and a right to improve its surface. However, he does not own any of the adjacent land so would be

unable to provide additional passing spaces. He confirms that other parties have rights of access along the track past the proposed plot, which would rule out the installation of a gate. He also rejects the request to improve the adopted section of Leachkin Brae given its remoteness from the site and the fact that this proposal (subject to revocation of the earlier permission) would not increase its use beyond the level that has already been accepted.

19. The council has not disputed the appellant's account of the land ownership and access rights position. Bearing those factors in mind and, especially, the fact that this proposal would replace permission 17/05112/PIP, where only limited access improvements and restrictions were required, I find the appellant's proposals, while not securing a standard of vehicular access that would typically be expected today, would provide an improved standard of safety and amenity for all track users over existing arrangements, and might encourage drivers to choose the eastern route in preference to the western alternative. Consequently, from an access perspective, I find no conflict with HWLDP policy 28.

20. Pedestrian and cyclist safety along the track towards Leachkin Brae could be compromised if resurfacing works encouraged higher vehicle speeds. Therefore, some form of speed control measures would need to be implemented as part of any improvements to the track surface. Bearing in mind its recreational value, care would also need to be taken to ensure that the character of the track did not become unduly suburban as a consequence of the improvement works. A planning condition could control such matters. I note that the council's access officer is content with the proposals, subject to conditions preventing obstruction of the core path during construction works and the repair of any damage to its surface.

21. An objector has expressed concern that, if the eastern access route is improved but no barrier is introduced to the west of the appeal site, this could encourage vehicles to travel along these unadopted tracks in order to avoid the Clachnaharry swing bridge on the A862. While that could be possible, having used both of these routes, it seems highly improbable that drivers would chose to take the narrow and winding route past the site in preference to the A862. The swing bridge is approximately four kilometres east of Ladystone Road and it seems highly unlikely that traffic would queue so far back along the A862 that drivers with local knowledge would be encouraged to divert. Therefore, the potential that improvement works could create a 'rat run' is not a factor to which I have given significant weight.

#### Other matters

22. The site is within a semi-mature Scots pine woodland with occasional rowan and juniper. It is included in the Ancient Woodland Inventory as long-established plantation-origin woodland. An arboricultural impact assessment undertaken in August 2020 identified 84 trees on the site. In order to construct the proposed development (assuming final design details submitted at the matters specified in conditions stage followed the indicative design and layout details provided with the appeal proposal) 33 trees would require removal. The appellant proposes to compensate for this tree loss by planting 100 native broadleaf trees on other nearby land that they own.

23. The council has expressed no concerns over tree loss. However, its forestry officer states that the extent of tree removal required by this proposal exceeds that which would be required to implement the extant permission. He is also concerned that retained trees could be at greater risk of windthrow and that proposals for compensatory planting are inadequate.

24. HWLDP policy 51 confirms that the council will support development which promotes significant protection to existing hedges, trees and woodlands on and around development sites. Neither the appeal proposal or the approved plot it is intended to replace, could draw support from this policy.

25. HWLDP policy 52 deals with the principle of developing a woodland site. An applicant is expected to demonstrate the need to develop there and to show that the site has capacity to accommodate the development. There is a strong presumption in favour of protecting woodland resources and proposals will only be supported where they offer clear and significant public benefit and, where this involves woodland removal, compensatory planting will usually be required. The proposal is contrary to this policy as it has not been demonstrated why there is a need to develop this site or why this would deliver a clear and significant public benefit.

26. I examined the nearby site which this proposal would replace. It too has dense tree cover and its development would be equally incompatible with policies 51 and 52. Subject to revocation of the extant permission and an acceptable replanting scheme, I am satisfied that what is currently proposed would have no worse effect on trees than what has already been approved.

27. The appellant commissioned a habitat survey for terrestrial mammals and bats. This found no evidence of badger, otter, Scottish wildcat, pine marten or potential bat roost features. One red squirrel drey was identified within the site and another nearby. This means the site could not be developed without a licence from NatureScot. In order to minimise effects on red squirrel, a species protection plan could be secured by a planning condition (to avoid harm during the construction stage) along with the inclusion of Scots pine within the compensatory replanting in order to provide alternative foraging habitat. Subject to those provisions, I am satisfied the proposal would comply with HWLDP policy 28 in terms of habitat impact and protected species.

28. Concern has also been expressed by local residents over the potential for this development to affect bird and insect populations. However, as there is no evidence to suggest that it would have a materially different effect to developing the approved alternative site, this is not a matter I have given significant weight.

29. Nearby residents fear the proposal would harm the privacy and amenity of the properties either side of the proposed plot. However, the nearest corner of 'The Heights' would be approximately 100 metres away from the proposed house and 'El Palomino' would be approximately 50 metres away. Even without the proposed retained tree cover, which would provide a degree of visual screening, such separation distances would be sufficient to ensure reasonable standards of privacy and amenity for existing and future residents.

30. It is suggested that no convincing justification has been put forward for not going ahead with the extant planning permission in principle, and instead proposing to revoke that permission and build on an alternative site. While that may be so, there is no policy or legal requirement on a prospective developer to justify their proposals in those terms.

31. HWLDP policy 31 requires development proposals that would create a need for new or improved public services, facilities or infrastructure to contribute towards their cost. The report to the council's South Planning Applications Committee set out a requirement for a developer contribution towards Charleston Academy of £741. However, in recommending

that planning permission be granted, this was not specified as a requirement. Given that the current proposal would replace the earlier planning permission in principle (where no developer contribution was sought), there should be no net increase in demand for public services, facilities or infrastructure. Consequently, I conclude that no contribution is required in this instance.

### Conclusions

32. Developing a house on this site would be contrary to a number of development plan policies, which aim to protect the hinterland of Inverness from further sporadic housing development and direct it instead to locations that are accessible by travel methods other than the private car. The tree loss required to accommodate the proposal would also be contrary to development plan policies. However, the fact this proposal would replace an extant permission for a similar form of development, provides adequate justification (subject to that earlier permission being revoked) to overcome this development plan conflict.

33. I will accordingly defer determination of this appeal for a period of up to 26 weeks to enable the necessary revocation order to be completed. If, by the end of that period, this office has not received confirmation that planning permission in principle 17/05112/PIP has been revoked, I may need to reconsider my decision.

*David Buylla*  
Principal Reporter

### **Draft conditions**

1. The development to which this permission in principle relates shall be begun no later than the expiration of five years beginning with the date of grant of this permission.

(Reason: section 59 of the Town and Country Planning (Scotland) Act 1997 requires a condition to be attached to planning permission in principle limiting its duration. Five years is the default period set by law and there is no material reason indicating that a different period should be set.)

2. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority. No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval:

- i. a detailed layout of the site of the proposed development (including site levels as existing and proposed);
- ii. the design and external appearance of the proposed development;
- iii. landscaping proposals for the site of the proposed development (including boundary treatments);
- iv. details of access and parking arrangements; and
- v. details of the proposed water supply and drainage arrangements.

(Reason: planning permission is granted in principle only and these specified matters must be approved prior to development commencing.)

3. Any details pursuant to Condition 2 above shall show a development featuring the following elements:

- i. walls finished predominantly in a white/off-white wet-dash render/smooth coursed cement render/natural stone;
- ii. a roof covering of natural slate;
- iii. single storey or 1¾ storeys in height;
- iv. windows with a strong vertical emphasis;
- v. a roof symmetrically pitched of not less than 40° and not greater than 45°; and
- vi. predominantly rectangular in shape with traditional gable ends.

(Reason: in order to respect the vernacular building traditions of the area and integrate the proposal into its landscape setting; in the interests of visual amenity.)

4. All foul water and surface water drainage provision within the application site shall be implemented in accordance with the approved plans and shall be completed prior to the first occupation of the development.

(Reason: in order to ensure that private foul drainage infrastructure is suitably catered for, in the interests of public health and environmental protection; to ensure that surface water drainage is provided timeously and complies with the principles of SUDS; and in order to protect the water environment.)

5. No development, site excavation or groundwork shall commence until a Tree Planting Plan and Maintenance Programme has been submitted to, and approved in writing by, the planning authority. This shall specify a total of 100 new trees. The location, species and maturity of these trees shall be agreed as part of the Tree Planting Plan. The approved Tree Planting Plan shall be implemented in full during the first planting season following commencement of development, or as otherwise approved in writing by the planning authority, with maintenance thereafter being carried out in accordance with the approved Maintenance Programme.

(Reason: in order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site and to provide replacement habitat.)

6. No development, site excavation or groundwork shall commence until full details of protective tree barriers have been submitted to, and approved in writing by, the planning authority. Thereafter, the approved barriers shall be erected prior to any development, site excavation or groundwork commencing and shall remain in place throughout the construction period. Barriers must not be moved or removed during the construction period without the prior written approval of the planning authority.

(Reason: in order to ensure the protection of retained trees, which are important amenity assets, both during construction and thereafter.)

7. No development shall commence until the footprint of the house, garage and driveway (along with any underground services due to be excavated) have been pegged out on the ground and all trees proposed for removal are clearly marked. Development shall only commence once these pegged out positions and marked trees have been approved in writing by the planning authority. No trees other than those approved for removal shall be cut down, uprooted, topped, lopped (including roots) or wilfully damaged in any way, and approved excavation and footprint locations shall not be altered, without the prior written approval of the planning authority.

(Reason: in order to identify tree constraints and establish the developable area of the site.)

8. No other development shall commence until the site access shown on the north boundary of the site has been constructed in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines, with:

- i. the junction formed to comply with drawing ref. SDB1; and
- ii. visibility splays of 2.4 metres x 90 metres (the X dimension and Y dimension respectively) in each direction formed from the centre line of the junction. Within the stated visibility splays, at no time shall anything obscure visibility between a driver's eye height of 1.05 metres positioned at the X dimension and an object height of 0.60 metres anywhere along the Y dimension.

(Reason: in the interests of driver and pedestrian safety.)

9. Prior to the commencement of any development, a scheme of works for the resurfacing of the drove road between the site entrance and Leachkin Brae shall be submitted to, and approved in writing by, the planning authority. The works so approved shall be implemented in accordance with the approved scheme, prior to the commencement of development on the application site. Thereafter, all access to the approved house shall be via this route, with no access taken via Ladystone Road.

(Reason: to provide a safe and suitable access to the site which does not involve the use of the Ladystone Farm Road and Overbridge 302/017.)

10. No development shall commence on site until a Construction Traffic Management Plan (including a routing plan for construction vehicles, which shall avoid the Bunchrew bridge (Overbridge 302/017)) has been submitted to, and approved in writing by, the planning authority. The approved traffic management plan shall be implemented prior to any development commencing on the application site and there shall be no deviation from it without the prior written approval of the planning authority.

(Reason: to ensure that construction traffic is managed appropriately; in the interests of road safety and amenity.)

11. No part of the development shall interfere with the Core Path (LO19.50) during or after construction works, including:

- the storing of materials on the Core Path
- allowing water, soil or any other substance to flow or spill onto the Core Path
- Erecting any fence or locked gates
- Prohibitory signs or notices
- Planting or overhang of any vegetation on the Core Path
- Projections from any building
- Parking of vehicles

(Reason: to maintain public access rights.)

12. Any disturbance or damage to the Core Path (LO19.50) shall be repaired to as good or better a standard than pre-development within 14 days of the disturbance occurring, or such longer period as agreed in writing with the planning authority.

(Reason: to maintain public access rights.)



13. No works shall commence until the developer has prepared and has had agreed in writing by the planning authority, a red squirrel Species Protection Plan, including measures to mitigate the effects of development. The Plan shall cover the application site and include mitigation measures where any impact, or potential impact, on red squirrels or their habitat has been identified. Development and work shall only progress in strict accordance with any mitigation measures contained within the Plan and the timescales contained therein.

(Reason: to minimise disturbance to nature conservation interests within the application site and ensure the protection of species and habitats.)

### **Schedule of drawings**

Location plan 18-01-LP-MRH REV A  
Block plan 18-01-LP-MRH REV A  
Site layout and elevations 18-01-LP-MRH REV A  
Road layout plan 18-01-LP-MRH  
Tree constraints plan 000001  
Tree planting plan 000002  
Tree protection plan 000003