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Our ref: NA-270-007  
Planning Authority Ref: 21/00514/FUL  
05 June 2023

Dear Lennox Boyd

### **DECISION NOTICE**

#### **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 ERECTION OF DWELLINGHOUSE, SITE WORKS, SERVICES AND NEW ACCESS ONTO PUBLIC ROAD AT LAND 25 METRES SOUTH EAST OF CRIMOND, CANNICH, BEAULY, HIGHLAND ('the proposed development')**

1. This letter contains Scottish Ministers' decision on the above planning application submitted to the Highland Council by Highland Architecture, on behalf of Mrs Catherine Hood on 3 February 2021 (Council Reference: 21/00514/FUL).
2. The application was called in for Scottish Ministers' determination on 20 May 2022. It was considered by means of written submissions and an unaccompanied site inspection which took place on 4 July 2022, by Ailie Callan, a Reporter appointed by Scottish Ministers for that purpose.
3. The final report with the Reporter's recommendation was issued to Scottish Ministers on 19 January 2023. A copy of the Reporter's report ('the Report') is enclosed. All references to paragraph and chapter numbers, unless otherwise stated, are to those in the Report.
4. The Scottish Ministers agree with the Reporter's recommendation that planning permission in principle should be refused. Ministers have carefully considered all of the evidence presented and the Reporter's conclusions in his Report.

#### **The development plan**

5. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997 ('the Planning Act') the application must be determined in accordance with the development plan, unless material considerations indicate otherwise.

6. On 13 February 2023, National Planning Framework 4 ('NPF4') was adopted by the Scottish Ministers and replaced National Planning Framework 3 and Scottish Planning Policy. NPF4 now sets out national planning policy. The statutory development plan covering the application site now consists of NPF4 and the Highland Wide Local Development Plan (2012) and the Inner Moray Firth Local Development Plan (2015) ('the LDP') and associated supplementary guidance.

7. In light of the above, Ministers have not taken the Reporter's findings and conclusions with regard to Scottish Planning Policy, including in paragraphs 4.21-4.25, into account in determining this application.

8. Policies in NPF4 of particular relevance to this case include Policy 22 'Flood Risk and Water Management' and Policy 14 'Design, quality and place'.

### Flood Risk

9. Ministers agree with the Reporter, paragraph 2.1, that the main issue to be considered in determining this application is flood risk.

10. The Reporter considered the information provided by the applicant which included a Fluvial Flood Risk Review, along with documents setting out the history of flooding in Cannich. Ministers accept the Reporter's conclusion at Para 4.3 that this information is not sufficient in demonstrating a lack of flood risk due to the complexities of the site and upstream river flows, nor does it take into account potential future flood risk.

11. Ministers note that in the absence of an FRA, it has not been possible to define the predicted 1 in 200 year design flood level for the site. The lack of this information means the Reporter was not able to determine that there would be safe access to and egress from the site (Paragraph 4.8).

12. Ministers agree with the Reporter in paragraph 4.10 that given the site's location, SEPA's request for a FRA in this case is proportionate and reasonable as evidence suggests the site is at risk of flooding. Ministers also agree with the Reporter that there are no provisions in policy 64 that would apply to exclude the proposal from being subject to an FRA.

13. Ministers agree with the Reporter in paragraph 4.11 that the information provided by the applicant does not fulfil the scope or requirements of a FRA as outlined in the supplementary guidance associated with policy 64 or in SEPA's guidance. Ministers agree with the Reporter that based on the evidence before him the site is located within the medium to high risk flood area.

14. Ministers agree with the Reporter in paragraph 4.12 that the proposed development would be contrary to HWLDP policy 64 and that it would also not fully

comply with flood risk principles in HWLDP policies 28 (Sustainable Design) and 29 (Design Quality and Place-making).

15. NPF4 Policy 22 (Flood Risk and Water Management) allows for redevelopment of existing buildings or sites in certain circumstances, and this is caveated that where flood risk is managed rather than avoided, the first occupied floor should be above flood risk level and have an additional allowance for freeboard. Furthermore such proposals should not create an island of development, and safe access/egress should be achieved. Due to the lack of a FRA, Ministers conclude that the proposed development is not supported by this policy.

### Non-Flooding Matters

16. Ministers agree with the Reporter in paragraph 4.15 that the proposed development would largely comply with the non-flood risk principles in policy 28 (Sustainable Design) insofar as it would be compatible with public service provision, accessible by public transport and that its design would be in keeping with the local character and accommodate the needs of the applicant.

17. Ministers agree with the Reporter that as the proposed development has not been proven to be outwith the medium to high risk of flooding it would not comply with HWLDP policy 28 in regard to flood risk as this would constitute a physical constraint, and that on this basis, it would also not comply with HWLDP policy 30 (physical constraints).

18. Ministers agree with the Reporter in paragraphs 4.17-20 that the potential for the site to be at flood risk means it is not compatible with the six qualities of successful places, specifically that of safe and pleasant places, and would not comply overall with HWLDP policy 29 (design quality and place-making) and policy 36 (development in the wider countryside)

19. NPF4 Policy 14 (Design, quality and place) states that (b) development proposals will be supported where they are consistent with the six qualities of successful places: healthy, pleasant, connected, distinctive, sustainable, and adaptable. Ministers consider the proposed development would not comply with the this policy due to flood risk and the reasoning set out above.

### Conclusions

20. Ministers agree with the Reporter's conclusions on flood risk set out at paragraph 4.30, that the proposed dwellinghouse does not accord with the requirements of policy 64 (flood risk) and as a result, would also not fully accord with the requirements of policies 28 (sustainable design), 29 (design quality and place-making), 30 (physical constraints), and 36 (development in the wider countryside). For the same reasons relating to flood risk Ministers also consider that the proposed development would not comply with NPF4 polices 22 (Flood Risk) and Policy 14 (Design, Quality and Place).

21. Ministers conclude that overall the proposed development is not in accordance with the provisions of the development plan and there are no material considerations that indicate that permission should nevertheless be granted.

### Formal Decision

22. Accordingly, for the reasons set out in the Reporter's report and as summarised above, Scottish Ministers hereby refuse planning permission for the erection of a dwellinghouse, site works, services and a new access onto the public road at land 25 Metres South East of Crimond, Cannich, Beauly, Highland.

### Right to Challenge

23. The decision of the Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997 of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

24. A copy of this letter and the Reporter's report has been sent to the Highland Council. Those parties who lodged representations will also be informed of the decision.

Yours sincerely,

*Elaine Ramsay*  
Elaine Ramsay  
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