



Town and Country Planning (Scotland) Act 1997 Appeal Decision Notice

Decision by Rosie Leven, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2301
- Site address: land 75 metres south east of Camas House, Fairways Business Park, Inverness, IV2 6AA
- Appeal by Intelligent Land Investments Group PLC against the decision by the Highland Council
- Application for planning permission 23/00497/FUL dated 1 February 2023 refused by notice dated 11 April 2024
- The development proposed: battery energy storage facility comprising access track, compound of battery and electrical equipment, meter buildings, stores, fencing, security cameras and associated landscaping
- Date of site visit by Reporter: 20 August 2024

Date of appeal decision: 13 November 2024

Decision

I dismiss the appeal and refuse planning permission.

Preliminary matters

On submission of the appeal, the appellant's name differed from that of the original applicant. The agent has confirmed that the appellant is the same as the applicant for the original application, which is Intelligent Land Investments Group PLC.

The council's screening opinion (reference 22/04641/SCRE) determined that the proposal is not likely to have significant adverse effects on the environment for the purpose of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. An environmental impact assessment was therefore not required. On the basis of the information submitted, I find no reason to disagree with the council's screening opinion.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The statutory development plan for the site is the National Planning Framework 4 (NPF4), the Highland-wide Local Development Plan (HWLDP) and the second Inner Moray Firth Local Development Plan (IMFLDP), adopted in June 2024. Adopted supplementary guidance of relevance to the proposal includes: Developer Contributions; Flood risk and Drainage Impact Assessment; and Trees, Woodland and Development.

2. Having regard to the provisions of the development plan the main issues in this appeal are the principle of the use on the site, including the loss of open space, and the visual impact.

3. The 1.7 hectare site lies to the south of Fairways Business Park. The proposal comprises 13 units, each containing four batteries and a transformer, capable of a storage capacity of up to 50 megawatts (MW). Also included would be a meter building, equipment store, Sustainable Urban Drainage Systems (SUDS) pond and, to the south of the site, a landscaping bund. Access would be off a new spur from the existing roundabout to the west, within the Fairways Business Park.

4. The chief Planner's letter of 27 August 2020 confirms that battery installation generates electricity and is therefore to be treated as a generating station.

Principle of the use on the site

Proposed use

5. The appellant indicates that the proposal would contribute to the National Grid Balancing Services Programme, providing storage for on and off-shore electricity energy suppliers during period of low demand to be released in periods of high demand. The facility would connect to the grid at the existing substation at Dores Road, 2 kilometres of the west of the site. The appellant's Grid Connection Statement indicates that a contracted position is in place with the grid operator to connect to the network. However, the exact cable route is not known at this stage and does not form part of the appeal proposal, so I do not assess it.

6. HWLDP policy 67 provides general support for renewable energy developments, taking into account their contributions to renewable energy generation targets and any positive or negative economic impacts. NPF4 policy 11 provides in principle support for energy storage proposals including battery storage. Neither HWLDP policy 67 nor NPF4 policy 11 offer unequivocal support. Proposals must also meet other criteria, including addressing a range of impacts, many of which are relevant to the proposal and which I discuss further below. These include landscape and visual impacts, as well as the impact on residential amenity, noise, public access, biodiversity and the water environment.

7. NPF 4 policy 11(c) requires proposals to maximise net economic impacts. Following some confusion over who the appellant was and in light of concerns raised in representations over the suggested local benefits, I sought further information from the appellant around the proposal's economic impact. The appellant confirms that the position in the Site Selection Statement (May 2023), Supporting Planning Statement (December 2023) and Supplementary Planning Statement (January 2024) remains accurate. The Site Selection Statement says that all proceeds will go directly to supporting Inverness Caledonian Thistle Football Club and its related community outreach programmes. The Supplementary Planning Statement, which is the most recent of these submissions, provides further details of possible benefits. It says that a significant proportion of the financial benefits will be managed through the football club's Community Development Trust and its outlines potential local supply chains benefits.

8. In the absence of any guidance on maximising economic benefits, and while the evidence does not clearly demonstrate how and when local financial benefits would be secured, in so far as I can establish from the appellant's submissions, I consider that the proposal would not be inconsistent with NPF4 policy 11(c). The appellant's aims around

local supply chains would also be consistent with the relevant aspects of NPF4 policy 25 on community wealth building.

9. Taking all of this into account, I consider that the proposal would receive strong support from NPF4 policy 11. While the proposal would not necessarily exclusively store energy from renewable energy sources, it would increase resilience and flexibility in the energy system which would contribute to the relevant climate change targets.

Loss of greenspace

10. The site is allocated as greenspace in the recently adopted IMFLDP, where policy 4 safeguards identified greenspaces from development. Section 4 of the plan highlights the role that the north-west facing slopes in this area play in providing green network connections, helping to define the setting and character of the city and providing the entrance to open countryside. Placemaking Priorities 19 includes safeguarding the character and setting of the city by preventing further development on upper slopes. While policy 75 of the HWLDP also seeks to safeguard open space, given the recent adoption of the IMFLDP, I focus on the site's greenspace allocation in the IMFLDP and the related policy 4.

11. The site comprises rough grassland with bushes and mature trees, interspersed with grassy pathways which appear to be well-used. Some of these informal pathways originate from the access point at the business park and fan out across the site and beyond. On the day of my site inspection, a small part of the easternmost part of the site appeared to have been recently maintained. The cut grass in that area was different in character from the natural condition of the remainder of the site. The location of this part of the appeal site, adjacent to the operational golf course, suggests it may be used informally as part of the golf course practice facility. However, this is a very small proportion of the appeal site and it is clear that the golf course use on the appeal site in general has ceased, as it has on the western part of the slope extending southwards from the appeal site. In the appellant's Site Selection Statement, the appellant notes that the golf course use is no longer functioning. The council's committee report from November 2023 also says that the proposal would not result in the loss of a sports facility.

12. Taking all of this into account, I do not regard the appeal site as an outdoor sports facility and, therefore, I consider that the second part of policy 4 is not relevant. For the same reason, I do not consider that NPF4 policy 21, which deals with the loss of outdoor sports facilities, is relevant.

13. I have had regard to the reporter's findings relating to south Inverness in the examination report into the proposed IMFLDP. These recognise the role of the site in pulling the green corridor into the city from further south. Although there is a suggestion that some development on the site might be possible, overall it is found that the closure of the golf course itself does not provide sufficient justification to allocate the site for mixed-use development. As the site is at the lower part of the slope, I do not find a major conflict with Placemaking Priorities 19.

14. The appellant considers the loss of greenspace to be a nominal amount (saying it is less than 2% of the Fairways Golf Course area) that would not prejudice the wider greenspace designation in the IMFLDP. It points to the significant areas of open space and amenity space in the wider area. It proposes to supplement the existing mature trees with additional planting, to enhance the landscape screening. The appellant's design and access

statement recognises that existing informal access to part of the site would no longer be available but suggests that other routes nearby would remain unaffected.

15. I consider that rough grassland has a benefit both for wildlife and people. I am satisfied that core path access via the trail to the east of the site would not be adversely affected, subject to conditions to ensure access during and after construction. However, the informal pathways across the site suggest that the site forms part of a wider natural resource for the residential uses to the south and provides a popular link between those areas and the uses and businesses at the business park. A number of the informal pathways would be severed by the proposal and the connection to the green network from the business park area would be lost.

16. Criterion (a) of NPF4 policy 20 (blue and green infrastructure) supports proposals that result in net loss of green infrastructure where they do not result in a deficit of green infrastructure and the overall integrity of the network is maintained. The policy suggests this will be informed by the planning authority's open space strategy. While the IMFLDP indicates that an audit has been carried out, from the evidence I understand that no current open space strategy exists. However, NPF4 policy 20 sets a different test from IMFLDP policy 4. I consider that policy 4 sets a stricter test, safeguarding identified sites without exceptions. In this particular case, as IMFLDP is more recently adopted, I consider that policy 4 would take precedence. Given the proposed loss of the greenspace and the lost connection into the green network from the north, the proposal would not be consistent with policy 4.

Visual impact

17. The appellant's zone of theoretical visibility map shows small sections of the surrounding built-up area from which there may be visibility. Visualisations from four viewpoints are also included. From these submissions and my site inspection, I am satisfied that the effect from areas to the north, west and south, including areas represented by viewpoints one and two, would be minimised by existing buildings and mature landscaping and would not therefore be significant.

18. I consider that the effects from the east and southeast of the site, as indicated by viewpoints three and four, would not be significantly adverse due to topography and existing landscaping. I also find that the landscaping proposals, including the planting of new trees would over time help to mitigate the visual effects. There would be some adverse visual impacts at close-range when viewed from some buildings and open spaces in the south of the business park. However, overall, subject to conditions on boundary treatments and landscaping, I consider that the visual effects would not be significantly adverse. The proposal would therefore be in line with the relevant aspects of NPF4 policy 11 and HWLDP policy 67.

Other matters

19. Separate to the matter of the principle of developing on greenspace, I am satisfied that conditions could secure biodiversity enhancements to existing woodland and grassland habitats, some of which are suggested in the appellant's biodiversity enhancement and management plan and biodiversity report. I am satisfied that there would be no adverse effects on protected species. Conditions could also ensure the protection of existing trees, which are covered by a Tree Preservation Order. The proposal would therefore be in line with NPF4 policies 3 and 6, IMFLDP policies 2 and the supplementary guidance on Trees, Woodland and Development.

20. Concerns are raised over the effect on the amenity of neighbouring properties. In terms of noise, following consideration of the appellant's noise assessment (September 2023) the council's environmental health team is satisfied that noise levels could be adequately controlled, subject to a detailed noise assessment prior to development commencing. The possibility of noise blighting future development of the neighbouring land to the south is highlighted. However, as it stands, that area is greenspace. Any future development plans would be assessed on their merits. Subject to conditions, including submission of a detailed noise assessment, with further survey work and details of noise mitigation measures, I consider that the proposal would not result in significant noise pollution. It would therefore be in line with HWLDP policy 72, and with the relevant elements of HWLDP policy 67 and NPF4 policy 11. For the same reason, I find that it would not conflict with NPF4 policy 23(e) on noise.

21. I find that the proposal does not fall within any of the other categories of hazardous or unacceptable developments covered by NPF4 policy 23 and would therefore not be inconsistent with that policy. There is no clear evidence of any likely air pollution arising from the proposal. I deal with fire safety concerns below.

22. On the basis of the evidence before me, I consider that the site is at low risk of flooding. Concerns are raised over drainage into the Allt na Skiah burn, a tributary of the River Ness. The council's Flood Risk Management Team is content, subject to a condition requiring approval of the final drainage design. Taking into account the appellant's drainage impact assessment, culvert capacity calculations and proposed SUDS elements, I consider that the proposal with suitable conditions attached would be in line with NPF4 policy 22 and HWLDP policy 66.

23. The council's committee report suggests that the council's developer contributions supplementary guidance is relevant. However, it is unclear which if any specific requirements would arise from the proposal. If I had been minded to allow the appeal, I would have sought more information on any requirements for development contributions. Subject to conditions, I consider that the proposal would not raise any issues in relation to other matters including effects on transport or built heritage.

Compliance with the development plan

24. I consider that the proposal finds strong support in principle from NPF4 policy 11 and HWLDP policy 67 in relation to energy development. I consider that detailed matters raised by those policies would be addressed subject to conditions. However, I find that the proposal on this site would be clearly inconsistent with IMFLDP policy 4 on greenspace protection (which I consider would prevail over NPF4 policy 20 in this particular case).

25. I have considered the requirement under NPF4 policy 1 to give significant weight to the global climate and nature crises. In this regard, the proposal pulls in two directions by developing existing greenspace to deliver energy and climate change benefits. However, despite the energy benefits, I find that the recent adoption of the IMFLDP and its confirmation of the greenspace allocation for the site is a key consideration, fundamental to the principle of development here. The proposal would involve the loss of greenspace and, given the specific location of the greenspace, it would cut off connections from the urban area out into the wider green network. As a result, I consider that the proposal cannot be said to be in line with the development plan as a whole.

Other material considerations

26. The Scottish Government's draft Energy Strategy and Just Transition Plan ('the draft Energy Strategy') gives general support for grid-scale battery energy storage as part of the response to building resilience and flexibility in our energy system. It does not include specific locational or planning advice. The Scottish Government's Energy Storage Planning Advice (2013) ('the 2013 guidance') provides guidance mainly to planning authorities, in considering opportunities for energy storage. It suggests that authorities should consider whether sites within existing industrial land allocations or brownfield land are suitable for energy storage. As the site is greenspace and not in or adjacent to industrial land, I find that the 2013 guidance strengthens my view that the proposal would be inconsistent with the development plan.

27. Many local concerns are raised about the safety of the battery units, particularly the potential fire risk given the proximity to residential, hotel, business and educational uses. The appellant's Site Management Plan highlights the proposed safety measures, including a battery monitoring system, separation of components and automatic fire, gas and smoke detection.

28. In the absence of specific Scottish guidance, I have been referred to the Health and Safety Guidance for Grid Scale Electrical Energy Storage Systems ('the health and safety guidance') published by the UK Department of Energy Security and Net Zero in March 2024. I have also been directed to the National Fire Chiefs Council's guidance from November 2022 - Guidance on Grid Scale Battery Energy Storage System planning ('the NFCC guidance') and a related draft revision from July 2024.

29. The appellant says that the safety aspects of battery storage are not a material planning consideration. However, the health and safety guidance and the NFCC guidance cover matters relating to site design, layout and access which I find are relevant planning matters. These guidance documents have therefore helped to inform my assessment.

30. I am satisfied that the proposal would address relevant matters within the guidance documents including the spacing of units, minimum distances to occupied buildings, site levels and the requirement for an emergency response plan. However, the proposed single access point would not be consistent with the guidance documents which recommend two accesses, aimed at assisting with fire appliance access in different wind conditions or if one access becomes obstructed. An email from the Scottish Fire and Rescue Service (SFRS) to the appellant in March 2024 makes general comments about how BESS proposals might be considered. It suggests no concerns have been raised about the proposal. While the context for this email is not clear and it does not appear to be part of a formal consultation, there is no evidence of an objection from the SFRS to the planning authority.

31. Taking all of this into account, subject to conditions requiring the approval of the site management plan and emergency response plan, I consider that relevant fire safety matters could be addressed, with the exception of two access points. I consider that the recommended two accesses are a matter of guidance, rather than a statutory requirement. Nevertheless, even if all fire safety matters were acceptable, this would not alter my overall conclusion above on the principle of the proposed development on this site.

32. Other sites have been suggested for the proposed use, but it is not for me to identify the best site for the proposal, only to assess the proposal on this site on its own merits. I also sought further information on other BESS proposals mentioned by the appellant.

However, the precise location and impact of those proposals differ from the appeal proposal and therefore do not alter my overall conclusion.

33. Other than the matters discussed above on maximising the proposal's economic impact, detailed matters raised in further submissions on changes in the administration of Inverness Caledonian Thistle Football Club and its charitable arm are not relevant to my planning assessment of the proposal. In addition, concerns raised over the way in which the planning authority's decision was made, or the integrity of parties involved, do not influence my assessment of the planning matters.

Conclusion

34. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Rosie Leven
Reporter