

Sutherland Local Plan- Examination

Reporters' request for further information concerning Appropriate Assessment- Issues 6, 35, 40, 44, 47, 102

The Reporters in their letter dated 3 September 2009 have requested further information in respect of the outcomes of the Appropriate Assessment and implications for any changes required to the Deposit Draft (November 2008) Local Plan. The Reporters have refined their request by letter dated 17 November 2009.

The Highland Council's response

The Council previously submitted as a background paper for the purposes of the Examination the Appropriate Assessment document dated June 2009. Having received the Reporters' request for further information, the Council has revisited the Appropriate Assessment in consultation with Scottish Natural Heritage and has amended and updated it, for example to make corrections, to include recently classified or proposed Natura sites and to further develop mitigation measures. This revised version, Version 2 dated December 2009, is now submitted as a background paper for the Reporters to refer and have regard to. It supersedes the earlier version.

The Council draws attention to particular changes that it commends to the Reporter should be made to the Deposit Draft Local Plan (November 2008) to assist in addressing likely significant effects of the Plan on Natura sites:

- Changes to Policy 4 that have already been commended to the Reporter under Examination Issue 86;
- An additional change to Policy 4 now commended to the Reporter as follows, to further reword the paragraph numbered 3 to read:

"For features of international importance (Natura 2000 (SPA, SAC) and Ramsar sites), developments likely to have a significant effect on a site, either alone or in combination with other plans or projects, and which are not directly connected with or necessary to the management of the site for nature conservation will be subject to an appropriate assessment. Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, we will only allow development if there is no alternative solution and there are imperative reasons of overriding public interest, including those of a social or economic nature. Where a priority habitat or species (as defined in Annex 1 of the Habitats Directive) would be affected, development in such circumstances will only be allowed if the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary

importance for the environment, or other reasons subject to the opinion of the European Commission (via Scottish Ministers). Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, the proposal will not be in accordance with the development plan within the meaning of Section 25(1) of the Town and Country Planning (Scotland) Act 1997 as amended.”

- Changes to Policy 7 that have already been commended to the Reporter under Examination Issue 88;
- Changes that have already been commended to the Reporter under Examination Issue 102 in respect of Waste Water Developer Requirements, and additional relevant changes now commended which are specified in the Annex below under 9.1 and also, in respect of contamination risks arising from flooding, 9.4.
- Additional changes now commended to deal with recreational pressure on sandbanks, specified under 9.7 in the Annex below.
- Additional changes now commended regarding otter surveys, specified under 9.8 in the Annex below.
- Changes that have already been commended to the Reporter under Examination Issue 102 in respect of Appropriate Assessment, to:

“Add development factor for Settlement Development Areas (SDAs) to reference any adjacent Natura sites.”
and to:
“Ensure that Plan includes all Natura sites including those proposed or recently confirmed.”
- The principle of having regard to and applying all relevant policies will be important in implementing the Plan, particularly bearing in mind Natura considerations. This is covered by the introductory paragraphs to the General Policies Chapter in the Local Plan, the wording of which is being examined under Issue 83. The Council in Issue 83 commends a change to those paragraphs that importantly for Natura would retain this message whilst adding reference to each development proposal being assessed on its individual planning merits.
- Changes commended, to incorporate in the Deposit Draft Local Plan (November 2008) the Mitigation Measures requiring to be applied for SDAs and Site Allocations as indicated by the individual appropriate assessment tables in the Appropriate Assessment document, those measures being chosen from and applied in accordance with the ‘menu’ set out in that document (see extract in Annex below for menu). This was previously covered

by a general commended change under Examination Issue 102 in respect of Appropriate Assessment. The firmed-up Appropriate Assessment document, including further developed menu now provides greater clarity as to the changes required in order to satisfy Natura requirements and hence the objections of Scottish Natural Heritage being dealt with under the Examination Issues with which this response is concerned.

Response in respect of specific Examination Issues

In respect of the specific issues subject of the Reporters' refined request for further information, the following table indicates the mitigation measures requiring to be applied as appropriate for the settlements indicated, as identified in the revised Appropriate Assessment document.

Mitigation Measures requiring to be applied as appropriate for the Settlement indicated (refer to Menu in Annex to this Response)

Issue 6: Dornoch, H4 Meadows Park Road

Measures 9.1/9.2, 9.5, 9.6, 9.7, 9.8

Issue 35: Ardgay, H1 North of Manse Road

Measures 9.1/9.2, 9.5, 9.8

Issue 40: Bonar Bridge, All allocations including MU1 Cherry Grove

Measures 9.1/9.2, 9.5, 9.6, 9.8

Issue 44: I1 South Bonar Industrial Estate

Measures 9.1/9.2, 9.4, 9.5, 9.8

Issue 47: Invershin Settlement Development Area

Measures 9.1/9.2, 9.4, 9.5

Conclusions

The Council's overall conclusion is that subject to the mitigation identified in the Appropriate Assessment (December 2009 version), including changes commended to the Plan, the Local Plan will not adversely affect the integrity of Natura sites. Furthermore the Council concludes that the Local Plan incorporating all its commended changes will not adversely affect the integrity of Natura sites.

ANNEX: Menu of Mitigation Measures (extract from Appropriate Assessment document, December 2009 version)

- 9.1 It is stated within the Local Plan Policy 7 – Waste Water Treatment that it is “the Council’s preference that any private system should discharge to land rather than water” which helps manage discharge and minimise the potential adverse impact on the water environment. It was also identified during consultations with SEPA, the regulative body, that they would look at development proposals on a site specific basis as and when they are submitted for consents. Additionally, the Council has commended changes to the Plan under Examination Issue 102 to include a “drainage to land” development factor for those SDAs where water bodies could otherwise be affected, thus preventing in those cases further proliferation of private outfalls. For avoidance of doubt, it has been agreed with SNH that this should include those SDAs draining to Natura water bodies where no public sewerage solution exists and this is now commended to the Reporter. This should in particular include, but may not be limited to, qualifying settlements likely to significantly affect the River Oykel SAC and/or the Dornoch Firth and Morrich More SAC or the Durness SAC. For other settlements, on consideration of Natura sites involved, of likely significant effects (sensitivities) and of developer requirements prevailing for Site Allocations, it may be determined that the SDA development factor will not be required for Natura purposes (although it may be required for the purposes of protecting water bodies).
- 9.2 It is stated within the Local Plan Policy 7 – Waste Water Treatment that “Connection to the public sewer as defined in the Sewerage (Scotland) Act 1968 is required for all new development proposals” except under the circumstances stated within the Policy. Within the text 5.7 Waste Water Treatment it states that “it is necessary to allow other private sewage treatment options in certain circumstances, in particular, where settlements are smaller, more dispersed in pattern and often not served by adequate existing or programmed existing public sewage systems. Developers should refer to SEPA’s Policy on the Provision of Waste Water Drainage in Settlements, for information”. These Policy provisions help manage discharge and minimise the potential adverse impact on the water environment. Additionally, the Council has commended changes to the Plan under Examination Issue 102 to include certain developer requirements in respect of site allocations, for public sewer connection where technically/ economically feasible to connect and where not feasible then allowing for interim private arrangements as an alternative only where they will be compatible with and make a future public connection/ scheme more likely (but note that for certain sites the Council has provided an alternative response under the relevant Examination Issues dealing with those sites).
- 9.3 For certain sites it is the Council’s preference that any new development should drain to sea loch rather than freshwater catchment.
- 9.4 It is stated within the Local Plan Policy 9 – Flood Risk Assessment that “Development proposals within or bordering areas susceptible to flooding, being areas with a medium to high flood risk (1:200 or greater annual probability of flooding), will need to demonstrate that the probability of flooding and any required mitigation has been assessed; a flood risk assessment will need to be submitted with the planning application. Development proposals outwith the medium to high flood

risk areas may be acceptable unless local circumstances dictate otherwise, and a Flood Risk Assessment may be required". Further changes to Policy 9 have been commended to the Examination Reporter with reference to Scottish Planning Policy 7 (SPP7) which will help clarify when a flood risk assessment is required. In addition the Council has commended to the Examination Reporter under Examination Issue 102 and under other, settlement and site-specific Issues the inclusion of particular developer requirements for certain sites. Further to those commended changes, and for the avoidance of doubt, the Council as a consequence of this appropriate assessment now commends to the Reporter as follows: that for both Invershin SDA and South Bonar Industrial Estate SDA a development factor should be included which refers to the need for the design of waste water arrangements in development proposals to have regard to the risk of, and seek to avoid, flooding leading to contamination of the Natura site.

- 9.5 General policies have been modified to alleviate the concerns that development proposals and policies may have an impact on Natura sites. Modifications including commended changes to the policies provide greater protection to these sites. (Additionally it may be noted that the Council has commended a change (under Examination Issue 102) to add a development factor for SDAs to reference any adjacent Natura sites.)
- 9.6 Open Space areas are safeguarded within Settlement Development Area (SDA) through Policy 1 - Settlement Development Areas and outwith SDAs by Policy 3 – Wider Countryside. Policy 2 – Land Allocations relates to the allocation of Open Space and within the glossary states that the Local Plan "specifically allocates (green space) in order to safeguard them from development". This reduces the likelihood of open spaces being developed for other uses which might more significantly affect Natura sites than does the open space use.
- 9.7 The Local Plan's proposals do not promote vehicle access to sandbanks at Dornoch and coastal protection schemes can help protect sediment issues. However, whilst the policies and proposals offer some safeguarding, there remains a likely significant effect that could possibly lead to adverse effect on the integrity of the Natura sites. This is due to pressure for recreational access that may involve vehicular access as far as a parking point and access on foot thereafter. This is particularly of concern given the likely significant effect arising from proposals in combination with one another and the high level of use already existing. Therefore the following mitigation measures are now commended to the Reporter by the Council:
- That for Dornoch SDA, this issue be explained in the supporting text and a development factor be included which states that any new development proposals on sites allocated for development in Dornoch should be accompanied by a recreational management plan which examines any likely increased pressures from recreational accessing of the sandbanks arising from the development (with appropriate assessment to be undertaken if the Natura site interests are likely to be significantly affected) and which sets out a plan of management, avoidance or mitigation measures where necessary;
 - That the Council engage with SNH and key local interests to prepare a framework which coordinates and draws together these recreational management plans and which will assist assessment of "in combination

effects”, and that the Local Plan text includes a commitment to this being in the Action Programme for the Local Plan.

- 9.8 Where appropriate, new development proposals may be required to carry out an otter survey and any other appropriate surveys to ensure no significant effect on qualifying features caused by disturbance, pollution or any other impact. Policy 11 – Protected Species – states “where there is good reason to believe that a protected species is present on site or may be affected by a proposed development, we will require a survey to be carried out to establish any such presence before determining the application”. For relevant SDAs the following development factor has been agreed with SNH and is now commended to the Reporter for inclusion in the Plan: *“Adjacent SAC qualifying features include otter. A survey to determine the presence or absence of otters should accompany any planning applications, except for modest extensions and alterations to existing buildings, within 250m of a watercourse, coast, loch or pond.”*
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