

Appeal Decision Notice

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Decision by Richard Hickman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2093
- Site address: Viewhill, Balloch, Inverness
- Appeal by Inverness Properties Ltd against the decision by the Highland Council
- Application for planning permission 11/04653/FUL for planning permission dated 20 December 2011 refused by notice dated 19 August 2013
- The development proposed: (in summary): Demolition of agricultural buildings to redevelop for 16 residential plots plus ancillary works including upgrading and extension of U2633 road, in accordance with submitted master plan
- Application drawings : as listed and included in the council's committee report dated 20 August 2013
- Date of site visit by Reporter: 2 December 2013
- There is a claim for expenses which is covered in a separate decision notice

Date of appeal decision: 31 March 2014

Decision

I allow the appeal and grant planning permission subject to the 16 conditions set out at the end of the council's committee report dated 20 August 2013. Attention is drawn to the 3 advisory notes at the end of this notice and the additional notes attached to the committee report.

Background

1. On 24 December 2013, I issued a Notice of Intended Decision to grant planning permission for this proposed development, subject to the conditions listed in the council's committee report dated 20 August 2013, and the signing and registering of an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997 between the appellant and the planning authority.
2. The section 75 agreement has now been concluded, and lodged for registration at the Registers of Scotland, who formally acknowledged receipt on 5 March 2014. This opens the way for the issue of this appeal decision notice.

3. The Notice of Intended Decision is attached to this decision notice, for information, and to provide the reasons for the decision.

Richard Hickman

R M HICKMAN
Reporter

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).

Directorate for Planning and Environmental Appeals

Appeal: Notice of Intention

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Notice of Intention by Richard Hickman, a Reporter appointed by the Scottish Ministers

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- The development proposed (in summary): Demolition of agricultural buildings to redevelop for 16 residential plots plus ancillary works including upgrading and extension of U2633 road, in accordance with submitted master plan
- Application drawings : see list on council's decision notice dated 19 August 2013
- Date of site visit by Reporter: 2 December 2013
- There is a claim for expenses which is covered in a separate decision notice

Date of notice: 24 December 2013

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission subject to the conditions listed in the committee report, following 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 covered in paragraph 20 below.

Description and background

1. The site is located in a rural setting to the south of Balloch, to the south of Culloden Wood. It comprises a large complex of agricultural buildings and associated hardstandings etc extending to 2.3ha. These are mainly large modern sheds, which were vacant and in a very poor state at the time of the site inspection. Road access is by means of a narrow cul-de-sac (Viewhill Road - U2633) leading west from the more important road leading south from Balloch to Culloden. There is a line of around a dozen detached houses along the north side of this cul-de-sac, extending to the farm complex, and several further houses immediately to the east on the opposite side of the main road.

2. The masterplan provides an indicative layout for the redevelopment of the site to form the house plots and ancillary parking etc. It also provides indicative building heights ranging from one to 2.5 storeys, and details of proposed improvements to the access. The latter comprise reconstructing the full length of the existing cul-de-sac, together with an improved junction, pavement, and improved bus stop layby (northbound only) at the main road.

3. The reason given for the refusal of permission was : *It has not been demonstrated that the development will bring about an environmental benefit as required in order to qualify as an exception (under section 6.22 of the Housing in the Countryside Supplementary Guidance) to the general presumption in Policy 35 of the Highland wide LDP against new housing in hinterland areas.*

4. Policy 35 of the Highland-wide local development plan (Housing in the Countryside – Hinterland Areas) states a presumption against housing in the open countryside of the hinterlands around towns, subject to a number of exceptions. The sixth of these is (in summary) where *The proposal involves.... the redevelopment of derelict land; the development of “brownfield” sites will be supported where a return to a natural state is not readily achievable and where a wider environmental benefit can be achieved through development.* The policy goes on to state that where exceptions are justified, all proposals should still accord with the general policies of the plan and the Housing in the Countryside/Siting and Design Supplementary Guidance.

5. There were objections to the proposal from the Balloch Community Council and the National Trust for Scotland due to concerns about the effect of the new houses on the Culloden Battlefield area. There were also 9 representations from local residents expressing a variety of concerns including the effect on the battlefield; access and road safety issues; surface water drainage/flooding; loss of privacy and amenity; inappropriate development in a rural area; sewage arrangements; and various other matters of detail.

Reasoning

6. The determining issues in this appeal are thus whether the proposal would be in accordance with the development plan provisions cited in the reason for refusal and any other relevant development plan policies; and if so, whether other material considerations indicate a different outcome. The matters of concern to the community council, the National Trust for Scotland, and local residents relate largely to environmental matters so that they require to be considered as part of the assessment of the potential wider environmental benefit for the purpose of policy 35.

7. Paragraph 6.22 of the Housing in the Countryside Supplementary Guidance covers the inclusion of limited new build housing associated with the conversion and rehabilitation of redundant traditional (underlined in text) buildings. This policy would not apply to the current proposal which (with a very limited exception) is primarily a new build development to replace non-traditional farm buildings.

8. The only reason given by the council for refusing the application is the issue of whether the proposal would result in an environmental benefit, as provided for in policy 35, sixth bullet point, which refers to a wider environmental benefit resulting from the

development (see paragraph 4 above). I accept the appellant's submissions that the proposal would result in a number of benefits, of which I consider the most important to be the removal of a large complex of redundant and partially derelict non-traditional agricultural buildings. I agree that there is no realistic prospect that the site could be cleared and restored for agricultural use, nor that these buildings will resume an agricultural use in the foreseeable future. Consequently, if no positive action is taken, I agree that the buildings would become progressively more rundown and unsafe, and that their removal would result in a major environmental benefit.

9. The council does not agree that there would be an environmental benefit because of the impact of the new houses on the battlefield site, the proposed density of the development, and the effect of additional vehicle movements on existing residents at Viewhill. The council contends that it would not be an acceptable expansion of the housing group as it would more than double the number of houses and extend the linear nature of the group.

10. The plans and cross sections contained in the appeal submissions show that the new houses would be largely contained within the footprint of the existing buildings, and would be significantly lower in overall height. I therefore agree with the appellant that the proposed redevelopment scheme would form a much less prominent feature in the landscape than the sheds, and would be better hidden in views from the south by the intervening ridge.

11. With regard to the impact on the Culloden battlefield area, the National Trust for Scotland is concerned that the proposal has the potential to affect the character of the battlefield conservation area by interrupting the open views and increasing the visual and physical intrusion of development into the battlefield site. The Balloch Community Council and others support this view. However Historic Scotland is content that the proposal would be unlikely to significantly increase the impact on the character of the battlefield area resulting from the existing buildings, and that the new proposal would not affect the integrity or significance of the battlefield.

12. As noted above, the houses would be well screened from the south by the intervening ridge, so that they would be scarcely visible (if at all) from the heart of the battlefield area and the location of the NTS visitor centre. I agree that the number and layout of the new houses would be appropriate to the setting, and would not affect the character of the battlefield area. I thus agree with Historic Scotland that it is unlikely that the proposal would have any impact on the character and ambience of the battlefield area. Redevelopment of the site would afford the opportunity for archaeological investigation, as provided for in the proposed planning conditions.

13. I can understand residents' concerns about a loss of residential amenity due to additional residential traffic using the Viewhill access road. I note that some of the houses are well screened from the roadway by walls and vegetation, but others are close to the road, where more passing traffic would be an unwelcome intrusion. Although unlikely, any re-use of the appeal site for farming activities or agricultural storage might well have some effect on residential amenity, as would a progressive deterioration of the buildings,

especially for those living closest to the site. The access roadway would be upgraded to adoptable standards, with traffic calming and pedestrian/cyclist safety measures, while achieving a rural character with soft edges and without conventional street lighting. I therefore consider that the new residential traffic and these arrangements would not cause an undue loss of amenity to existing residents.

14. On balance, I am satisfied that the environmental benefits of removing the unsightly derelict sheds at the appeal site, and reducing their visual impact on the landscape setting of the battlefield, would greatly outweigh any environmental disbenefits resulting from additional residential traffic on the access road. I therefore conclude that the proposal would, in principle, be a justifiable exception to policy 35 as provided for in the sixth bullet point of the policy.

15. Policy 35 also requires all exceptions to the policy to accord with the general policies of the plan, and with the supplementary guidance on housing in the countryside. In this respect, the council argues that the proposal would not be an acceptable expansion of the housing group as it would more than double the number of houses and extend the linear nature of the group, and that the density of the proposed development would be inappropriate as part of the appeal site is within the inventory site of the Culloden battlefield.

16. I agree with the appellant that the proposal would meet the criteria for the suitable extension of housing groups set out in the supplementary guidance, as it would form a limited and compact rounding off of the group, using brownfield land within a well defined boundary. The master plan and other details have been evolved to achieve a suitable design that is appropriate to the location, retaining an existing traditional building within the layout, and without having an adverse effect on trees and the landscape setting. The proposed density and height of the new houses would be compatible with maintaining the character of the battlefield.

17. In addition, I note that :

- The proposed road access, drainage, and surface water run-off arrangements are all acceptable to the responsible authorities. The development would be served by mains drainage and water supply. Surface water would be disposed of through an attenuation system that is acceptable to the council and not opposed by SEPA, based on a reduced run-off from surfaces amounting to around half of the existing roof area.
- Bats have been found to be using the buildings. Safeguarding arrangements would be put in place. The council officers' assessment of the matter, as explained in the committee report and taking account of the consultation reply from SNH, concludes that the 3 tests laid down in the habitats regulations would be met.
- The new houses would be reasonably conveniently placed for access to local services in Balloch, with an improved bus stop close by and a near-continuous pedestrian footway alongside the road.

18. Apart from the matters discussed above, the council has not identified any potential breaches of the development plan. The officers' committee report took account of all aspects of the development plan considered to be relevant, including the protected species,

concluding that planning permission should be granted, subject to the listed conditions and a legal agreement to secure contributions to affordable housing and footpath/cycle improvements. If the development is to be approved, the council wishes these matters to be put in place.

19. For these reasons, I find that the proposal would be in accordance with policy 35 and other relevant provisions of the local development plan, and that other matters that have been raised, including the potential effect on Culloden battlefield and on local residents and the presence of bats on the site, do not justify withholding permission. I conclude that planning permission should be granted, subject to the list of conditions set out in the committee report, but that a planning obligation should be put in place to secure the two matters identified in paragraph 8.24 of the committee report.

20. Accordingly I conclude that a planning obligation should be completed in order to secure contributions to affordable housing and footpath/cycle improvements, as specified in the committee report. I will therefore defer determination of this appeal for a period of 12 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 such other legal instrument as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12 week period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without a planning obligation.

21. Finally, I note the suggestion in one of the representations that a temporary access route should be formed for use during the construction period. I agree that, on the face of it, this would have considerable advantages, as it would avoid conflict with other vehicles and pedestrians using Viewhill Road; safeguard residential amenity from the disturbance caused by movements of construction traffic and machinery in close proximity to the houses; and would remove the risk of damage to Viewhill Road during the construction period. All this is particularly important because of the need to take down and presumably remove the existing sheds on the site. An alternative route for construction traffic is not before me for consideration, but, given that I am minded to approve this application, this is a matter that deserves careful consideration by the developer, in consultation with the council and other interested parties.

Richard Hickman

R M HICKMAN
Reporter

List of conditions and notes for applicant : see committee report

Advisory notes

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