

THE HIGHLAND COUNCIL

NORTH PLANNING APPLICATIONS COMMITTEE
05 August 2014

Agenda Item	6.8
Report No	PLN/056/14

14/01868/S42: Scottish Salmon Company
Site North West of Sgeir Dughall Loch Torridon Diabaig Torridon

Report by Head of Planning and Building Standards

SUMMARY

Description: Operation of a marine fish farm (Atlantic salmon) without compliance with Condition 5 of planning permission 11/04228/FUL relating to a ten year time limit.

Recommendation: REFUSE PLANNING PERMISSION

Ward: 6 – Wester Ross, Strathpeffer and Lochalsh

Development category: Local Development

Pre-determination hearing: Hearing not required

Reason referred to Committee: Manager's discretion

1.0 PROPOSED DEVELOPMENT

- 1.1 This is an application for the removal of Condition 5 of planning permission 11/04228/FUL for a fish farm site on the north-eastern shore of outer Loch Torridon, north west of Diabaig. Condition 5 states:

The planning permission hereby granted shall be limited to a period of ten years from the date of the decision notice.

Reason: *to allow alternatives to controlling sea lice to be provided within that time in recognition of the ongoing concerns with regard to the impacts on wild fisheries, whilst allowing the operator time to find alternative culture techniques for the site, for example, closed containment.*

- 1.2 The site comprises 14 x 100 m circle cages with 2.5m high top nets and a 220 tonne feed barge. The cages are in a single group within a 65m x 65m grid matrix marked by 24 grey marker buoys. The area of the development is nearly 37 ha.
- 1.3 A supporting document was supplied with the application. It suggested reasons why the condition should not have been applied, consequences as a result of the condition and why the company wants the condition removed.

1.4 **Variations:** Supplementary information provided by applicant 11/07/14.

2.0 SITE DESCRIPTION

2.1 The site lies north west of Sgeir Dughall, near Diabaig, on the north east side of Loch Torridon. There is no vehicular access to the site; the track above the site lies approx. 1.5 kms from the end of the Lower Diabaig road. There are no overlooking properties. The site is serviced by boat from Kenmore. The backdrop of the proposal is rocky moorland with a steep and rugged coastline and undulating hinterland. There are currently no other fish farms in this section of the loch and it lies adjacent to the Wester Ross NSA but within a wild land search area as defined by SNH.

3.0 PLANNING HISTORY

3.1 The site was granted permission, subject to conditions, on 23/03/12 (Ref: 11/04228/FUL).

3.2 The company lodged an appeal to Scottish Ministers on 22/06/12 to remove Condition 5 (REF PPA-270-2076). This was withdrawn by the applicant on 06/08/12. At that time, Highland Council provided information to the appeal stating that **“the condition allows the development to proceed when the alternative would have been to recommend refusal.”**

4.0 PUBLIC PARTICIPATION

4.1 Advertised : Unknown neighbour: 13/06/14
Representation deadline : 13/06/14
Timeous representations : 1
Late representations : 0

4.2 Material considerations raised are summarised as follows:

- Risk to wild salmonid stocks high due to unacceptably high sea-lice levels;
- Sea-lice levels 24 times above the threshold level in the loch;
- Request appropriate monitoring towards end of ten year period to judge whether sea-lice are likely to be having a deleterious impact on wild fish stocks.

4.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam. Access to computers can be made available via Planning and Development Service offices.

5.0 CONSULTATIONS

5.1 **Marine Scotland** has no objection. It refutes comments made by applicant regarding sea-lice levels, reiterating *“consideration should be given to the potential cumulative effect that may lead to a detriment impact upon wild salmonids in the*

area. However, the current state of knowledge does not allow us to quantify the severity of that impact if any'. It also restated that its monitoring powers related to aquaculture animal health [i.e. the fish in the cages] and not for wild fish.

- 5.2 **SEPA** has no objection. SEPA considers that the application is unlikely to have any significant effects from sea-lice treatments to the receiving water body but the efficacy of sea-lice treatments falls within Marine Scotland's remit. They note that a full stocking cycle has not been completed therefore an accurate benthic assessment cannot be completed.
- 5.3 **SNH** has no objection. SNH notes that the comments provided on the original application are still applicable but have no further comment to add.
- 5.4 **Wester Ross Area Salmon Fishery Board** object. It defends the use of the condition and notes that SPP acknowledges potential conflict between the interests of aquaculture and local fishery interests. A recent DPEA guidance note on how reporters should handle Section 42 applications is provided. It provides Scottish Salmon Producers Organisation (SSPO) derived data on sea-lice levels that are 24x higher in the loch than the industry target. It supplies Scottish Government (SG) high mortality level data for the site and a Fish Health Inspectorate site visit report showing high mortality rates within about 2 months of initial stocking.

6.0 DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

Highland Wide Local Development Plan 2012

- 6.1
- | | |
|--------------|--|
| Policy No.28 | Sustainable Design |
| Policy No.49 | Coastal Development |
| Policy No.50 | Aquaculture |
| Policy No.57 | Natural, Built and Cultural Heritage |
| Policy No.58 | Protected Species |
| Policy No.59 | Other Important Species |
| Policy No.60 | Other Important Habitats and Article 10 Features |
| Policy No.61 | Landscape |
| Policy No.63 | Water Environment |

Wester Ross Local Plan as continued in force 2010

- 6.2 This local plan is relevant only insofar as it continues in force post adoption of the Highland-wide Local Development Plan

7.0 OTHER MATERIAL POLICY CONSIDERATIONS

Highland Council Supplementary Planning Policy Guidance

- 7.1 Highland's Statutorily Protected Species

Scottish Government Planning Policy and Guidance

7.2 Scottish Planning Policy (SPP) (2014)

Other

7.3 Loch Torridon Aquaculture Framework Plan

8.0 PLANNING APPRAISAL

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Development Plan Policy Assessment

8.3 A key issue is whether or not there have been any significant changes to policy since the original grant of permission (11/04228/FUL) to warrant removal of the condition. The condition that is the subject of this application is Condition 5 that states:

'The planning permission hereby granted shall be limited to a period of ten years from the date of the decision notice.'

Reason: *To allow alternatives to controlling sea lice to be provided within that time in recognition of the ongoing concerns with regard to the impacts on wild fisheries, whilst allowing the operator time to find alternative culture techniques for the site, for example, closed containment.'*

8.4 Since the original application was determined, the Highland wide Local Development Plan (HwLDP) has been adopted. The key issues against which the current application is judged are virtually the same as the previous application. A key requirement of the development plan policy is to safeguard our environment, using conditions where appropriate. Conditions imposed on planning permission 11/04228/FUL help secure this.

8.5 Policy 50 of the HWLDP supports the sustainable development of aquaculture subject to there being no significant adverse effect, directly, indirectly or cumulatively on, among other things, wild fish populations. In addition, Policies 28, 59 and 60 in particular, but not exclusively limited to these, are also relevant. These policies address the need to protect various habitats and species. If there was sufficient confidence that there would be no significant impact on wild salmonids the policy context may allow removal of Condition 5.

- 8.6 If there is insufficient evidence to ensure compliance with these policies the precautionary principle must apply, which justifies retention of Condition 5.

Material Considerations

- 8.7 SPP (2014) notes that *“planning authorities should apply the precautionary principle where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain but there is sound evidence indicating that significant irreversible damage could occur. If there is any likelihood that significant irreversible damage could occur, modification to the proposal to eliminate the risk of such damage should be considered.”* Attaching Condition 5 to the original permission allowed development to proceed on a temporary basis subject to further assessment of the impacts of the development (see below).
- 8.8 The impact of sea-lice emanating from this fish farm on wild salmonids is a key material consideration. It is well established that lice levels emanating from a fish farm are at their greatest towards the end of a production cycle i.e. usually c. 22 months after stocking. As this site has not yet reached this stage, i.e. a full stocking cycle as also noted by SEPA, it is unrealistic to make a judgement on the effectiveness or otherwise of the applicant’s control measures, especially since no sea-lice data or evidence have been produced by the applicant to support the application. It is therefore considered irresponsible to remove the temporary nature of the permission based on what is effectively a few months’ production, given that the main impacts will not be for many months yet following relatively recent restocking and once at least one full standard production cycle had been completed (see para 8.13). This is a view reflected in the comments received by some the statutory consultees, one of whom has supplied supporting sea-lice data for the loch system (see para 8.13).
- 8.9 The comments reiterated by Marine Scotland Science (MSS) and the information supplied by Wester Ross Area Salmon Fishery Board (WRASFB) and SEPA noted above in section 5 provide further evidence, that in this case, the precautionary principle is appropriate and is currently delivered via Condition 5. To clarify, MSS has regulatory powers that allow inspectors to make an assessment on the level of sea lice on a site and determine that satisfactory measures are in place for the prevention, control and reduction of sea-lice in relation to the fish in the cages. SEPA has powers with relate to the quality of the water in the water column.
- 8.10 MSS has relatively routinely noted in response to fish farm applications that *“adherence to the industry’s Code of Good Practice (CoGP) may not necessarily prevent release substantial number of lice from aquaculture installations. The CoGP takes no account of farm size, or number of farms in an area, in setting threshold levels for sea lice treatments. This may be appropriate when the aim is to protect the welfare of farmed fish but it will not necessarily prevent significant numbers of larval lice being shed into the environment, and posing a risk for wild fish particularly in the case of larger farms or management areas holding a large biomass of farmed fish.”* In the particular case of this site, MSS also noted *“adherence to the CoGP may not necessarily prevent release of substantial*

numbers of lice from aquaculture installations and that sea trout are present in these inshore waters all year, not just at the spring smolt migrations” in response to the original application.

- 8.11 In this case, there is a large volume of fish in a relatively narrow, constrained loch system that is fed by a number of rivers important for wild salmonids. High concentrations of sea-lice can be driven by tide and wind to areas where sea trout congregate. Thus, given the relatively high concentration of fish farms in Loch Torridon, which were present prior to the current proposals under consideration, the increased cumulative impact may therefore lead to a greater detrimental impact on wild salmonids in the area. These issues were also previously noted by MSS in the original application, but it was unable to quantify the severity of impacts and this remains the case.
- 8.12 Thus, whilst all statutory bodies also have a biodiversity duty, it is for the Council in this instance to administer safeguards with regard to the protection of wild salmonids and the impacts of sea-lice emanating from the Torridon fish farms may have on them. Given that most of the statutory consultees are unable to provide definitive evidence on the impact of sea-lice on wild salmonids from this application, but some appear to strongly suggest there are, or are likely to be, significant impacts, compliance with the policies discussed in section 8.5 cannot be assured.
- 8.13 Data from the Scottish Salmon Producers Organisation’s website and the WRASFB response show that average adult female sea-lice numbers were over 24 times higher than the target value in September 2013. These data are from the four operational fish farms in the Loch Torridon system, operated by the Scottish Salmon Company (three sites) and Marine Harvest (one site). Given these operators have agreed under the CoGP to synchronous operation using single year classes, all farmed fish in the loch system would be at the same stage of development. Hence, the very high levels of sea-lice found were at a time when none of the other three sites or this one was at the end of a standard full production cycle, as also noted by SEPA for the latter site. Towards the end of a full production cycle is when, as noted above, sea-lice levels emanating from a fish farm are at their greatest. From these data it would appear all sites were therefore harvested early and were fallow for the following three months (Nov, 2013 – Jan, 2014). Thus, whilst the monitoring and implications of these sea-lice is mainly an issue for other agencies in relation to the fish in the cages, there are significant implications on the resultant impacts on wild salmonids, which fall to the Council to consider.
- 8.14 Shieltaig Community Council considered the application at its council meeting on the 3rd June 2014 and registered a “unanimous and firm objection”. It noted that whilst disappointed the [original] application was approved, it was reassured in part by Condition 5, the subject of the current application. It noted this condition was essential to ensure that the Scottish Salmon Company were able to demonstrate that their control of sea-lice on the farm was so effective as to present minimal risks to wild salmonid stocks in the area before the planning permission was made permanent.

- 8.15 In addition to the application and supplementary information provided for removal of the condition, the applicant suggested the condition should not have been placed in the first instance (see Annex 1). However, as discussed throughout this committee report, the reasoning for the condition is shown to be considered necessary and reasonable as it allowed the development to proceed. The alternative was to refuse the application. This was accepted by the applicant.

9.0 CONCLUSION

- 9.1 All relevant matters have been taken into account when appraising this application. Given that nothing substantive has changed to lessen sea-lice impacts on wild salmonids and that a full standard production cycle has not been reached to allow proper assessment of these impacts, based on the best evidence available, there are no conclusive reasons to grant the application.
- 9.2 Nothing substantive has changed to warrant removal of the condition; if anything the information to date suggests a stronger case for its retention. The high sea-lice levels present at a time when peak values would not be expected is of concern regarding their potential impact on wild salmonids. Therefore it is considered that the proposal does not accord with the Development Plan and is unacceptable in terms of applicable material considerations.

10.0 RECOMMENDATION

Action required before decision issued	N
Notification to Scottish Ministers	N
Notification to Historic Scotland	N
Conclusion of Section 75 Agreement	N
Revocation of previous permission	N

Subject to the above, it is recommended the application be **REFUSED** planning permission for the following reasons:

1. Condition 5 requires to be retained in order for the development to comply with Policy 28 of the Highland wide Local Development Plan. This policy requires application of the precautionary principle when assessing development proposals where the potential impacts are uncertain, but where there are scientific grounds for believing that severe damage could occur to the environment. The site has not been in operation for a sufficient number of standard full production cycles to allow adequate determination of the impacts on wild salmonids. Therefore permitting development without compliance with Condition 5 would be premature.
2. Condition 5 requires to be retained in order for the development to comply with Policy 50 of the Highland wide Local Development Plan. Policy 50 requires, that, to be supported, fish-fish farming will not have a significant adverse effect, directly, indirectly or cumulatively on (1) natural heritage, taking into consideration, *inter*

alia, wild fish populations, habitats and species; and (2) existing fish farm activity. The site has not been in operation for a sufficient number of standard full production cycles to allow adequate determination of the impacts on wild salmonids. Therefore permitting development without compliance with Condition 5 would be premature.

3. Condition 5 requires to be retained in order for the development to comply with Policy 59 of the Highland wide Local Development Plan. Policy 59 requires the Council to have regard to the presence of and any adverse effects of development proposals, either individually and/or cumulatively on the species listed in the policy. Salmon (*Salmo salar*) are listed in Annex V of the EC Habitats Directive. Salmon and Trout (*Salmo trutta*) are listed as UK BAP priority fish species, feature significantly in the Wester Ross BAP and are listed on the Scottish Biodiversity List. The site has not been in operation for a sufficient number of standard full production cycles to allow adequate determination of the impacts on these species. Therefore permitting development without compliance with Condition 5 would be premature.

Signature: Malcolm MacLeod

Designation: Head of Planning and Building Standards

Author: Shona Turnbull

Background Papers: Documents referred to in report and in case file, see www.wam.highland.gov.uk/wam ref: 14/01868/S42

Annex 1 – Response to supporting statement

1. The applicant submitted a supporting statement to the application. The following comments are supplied to provide background to the issues raised, using the headings supplied by the applicant in italics, where appropriate. Note both the supporting statement and supplementary material submitted on 11/07/14 have been considered throughout the decision-making process.

2. *Reasons by the condition should not have been imposed in the first place.* This is dealt with in section 8.15 and throughout the main report.

3. *Consequences as a result of the condition being imposed and why the company want the condition removed.* Largely non-material considerations regarding financial risk relating to equipment choice. It notes the original appeal was withdrawn for business reasons. The HC submission noted to the DPEA that the alternative was to refuse the application.

4. *Changes that have occurred since planning permission was granted.* This contains non-material considerations regarding, among other things, the company's new market strategy, new cages at another site owned by the company and ISO accreditation. The supporting statement also discusses changes in national policy; these have been considered in the production of the committee report. Whilst welcome by the planning authority, the Farm Management Agreement is an agreement between fish farming businesses within a farm management area and is outwith any local authority control.

5. *Implementation of the development – actual impacts.* Much of the information supplied in this section relates to monitoring required by other agencies for the fish in the cages and the water column, not the impacts of sea-lice on wild salmonids. Sections 8.9 – 8.14 in particular of the committee report are relevant. As noted in the report, the main impacts of the sea-lice emanating from the fish farm will not be at their most notable levels until a full production cycle have been completed therefore it is too early to assess the impacts of this development at this stage in terms of policy compliance.

6. *The applicant has complied with the terms of the conditions.* See main report and comment above regarding production cycle not completed.

Annex 2– Letters of Representation

LIST OF REPRESENTATIONS FOR Section 42 application for non-compliance with condition 5 of permission 11/04228/FUL - ten year time limit - Marine fish farm - Atlantic salmon AT SITE NW OF SGEIR DUGHALL LOCH TORRIDON, DIABAIG, TORRIDON, 14/01868/S42

OBJECTORS

1.	Mr Richard Munday, Kinloch, Shieldaig, Ross-shire, IV54 8XJ,	04/06/14
----	--	----------