

Agenda Item	6.3
Report No	PLN/005/22

HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 25 January 2022

Report Title: 20/01019/FUL: Fraser Electrical
Land 110m NE of 3B Inchrory Drive, Business Park, Dingwall

Report By: Area Planning Manager North

Purpose/Executive Summary

Description: Erection of commercial storage and office unit

Ward: 08, Dingwall and Seaforth

Development category: Local

Reason referred to Committee: Managers discretion

All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **REFUSE** the application as set out in section 11 of the report

1. PROPOSED DEVELOPMENT

- 1.1 The proposal is to erect a commercial storage and office unit, with associated access and parking. It is a standard steel profile structure measuring approx. 30m x 20m, and will be finished in dark grey Kingspan panels with red doors and windows.
- 1.2 The parking and main entrance area will be off the north elevation, with a service area to the rear (south) elevation. There is a large set back off both Inchroy Drive (to the south) and Druimchat Ave (to the east) to enable the existing landscaping to be augmented.
- 1.3 A new access into the site will be formed off Druimchat View.
- 1.4 Pre Application Consultation: none
- 1.5 Supporting Information: design statement
- 1.6 Variations: none

2. SITE DESCRIPTION

- 2.1 The site is located on the corner of Inchroy Drive and Druimchat Ave within Dingwall Business Park. There is existing landscaping alongside the public roads. The site itself is level in nature and is overgrown and unkept grassland. The site lies within Phase 2 of the Dingwall business park.
- 2.2 The sites immediately to the west and north are currently vacant.

3. PLANNING HISTORY

- 3.1 19/04687/FUL Erection of office/workshop building (linked application on nearby site). This application is also on the agenda for this Committee Pending
- 3.2 21/05232/PIP Erection of office and workshop building, installation of storage unit and associated parking arrangements (linked application on nearby site). This application will be assessed at a future Committee. Pending

4. PUBLIC PARTICIPATION

- 4.1 Advertised: neighbour
Date Advertised: 27/03/2020
Representation deadline: 04/04/2020

No representations received

5. CONSULTATIONS

5.1 **Transport Planning** have no objection subject to the access layout being shown on a scaled, dimensioned drawing; the visibility splay being shown on a drawing; the waste and recycling area being shown on a drawing; parking discrepancy in that 7 spaces are shown but it is stated that 9 are provided; no cycle parking is shown (but is required), and no drainage drawings are provided.

5.2 **Flood Risk Management Team** objects on the grounds of flood risk. The embankments around Dingwall Business Park are considered to be 'informal flood defences', and the structural condition and design standard of the informal flood defences are unknown and uncontrolled. As such, a level of risk to any proposed development behind or potentially benefitting from the informal flood defences cannot be ruled out. Informal flood defences should be considered within the context of the SPP risk framework as if the scheme did not exist

SEPA's flood mapping shows that Dingwall Business Park is informally protected on at least 3 sides from flooding of the River Peffery's flood plain by the informal flood defences. A recent Flood Study broadly agrees with SEPA's flood data, confirming that the business park lies almost entirely within the 1 in 200 year storm event flood extent.

The Business Park may be at a medium to high likelihood of flooding. This level of risk is unacceptable for this type of development under the SPP. . Whilst there are not concerns about significant flood risk to existing properties, the standard of protection does not meet the requirements for future development

The Flood Risk Management Team will maintain its objection until such time as an appropriate resolution is reached to ensure adequate flood protection of the business park in perpetuity.

Suitable drainage information is required for a development of this size.

5.3 **SEPA** object of the grounds of flooding. Until recently, it was thought that the flood bund constituted a formal flood prevention scheme. While not brought forward under flood risk legislation, it was built by the then Council (and another public body - Highlands and Islands Enterprise) for the specific purpose of flood protection. It has also recently emerged that the flood bund was sold to individual owners of plots so that the flood bund is now in multiple private ownership, and is no longer maintained as a flood bund and its structural integrity may already have been compromised.

As a result SEPA now consider the embankments bordering the business park to be an informal flood defence. Whether the bund is considered a formal flood scheme or not is very significant in relation to the acceptability of this development, and for the further development of the business park as a whole.

Any development located behind and 'protected' by informal embankments could be vulnerable due to the potential for embankment failure and/or overtopping. There is also a risk to areas behind informal embankments if the standard of protection degrades over time, either due to lack of maintenance, structural

degradation or the effects of climate change. In cases when such structures are overtopped and/or fail, areas behind them are at greater risk than they would have been otherwise as sudden and rapid inundation can occur, with extremely high velocities and forces.

With regards to Scottish Planning Policy (SPP), any protection offered by informal flood defences would not be taken into account when considering development behind or benefitting from them. Such proposals would be considered within the context of the SPP risk framework as if the embankments did not exist. SEPA therefore consider that the business park is at medium to high risk of flooding from the River Peffery and object on flood risk grounds.

SEPA would only be able to withdraw their objection if relevant works were undertaken to formalise the bund and an ongoing maintenance regime is established and adopted by the Council as formal flood works to ensure the integrity of the bund in perpetuity.

It would also need to be demonstrated that all three sections of the existing flood bund have adequate geotechnical stability and provide at least a 1 in 200 year standard of protection to the Business Park.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

28 - Sustainable Design
29 - Design Quality and Place-making
30 - Physical Constraints
41 - Business and Industrial Land
64 - Flood Risk
65 - Waste Water Treatment
66 - Surface Water Drainage

6.2 Inner Moray Firth Local Development Plan 2015

Within Settlement Development Area; no site specific policies apply.

6.3 Highland Council Supplementary Planning Policy Guidance

Flood Risk and Drainage Impact Assessment (Jan 2013)
Physical Constraints (March 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

Scottish Planning Policy 2014 (as revised 2020)

8. 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.

Determining Issues

- 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.

Planning Considerations

- 8.3 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
 - b) flood risk
 - c) design and layout
 - d) any other material considerations.

Development plan/other planning policy

- 8.4 The site lies within Dingwall Business Park, and as such the proposed commercial storage and office unit is an appropriate use, and accords with Policy 41 which directs business and industrial users to specified business and industrial sites.

Flood Risk

- 8.5 Policy 30, Physical Constraints and its associated supplementary guidance aim to provide developers with up to date information regarding physical constraints to development, and to ensure proposed developments do not adversely affect human health and safety or pose risk to safeguarded sites. Where a proposed development is affected by any of the listed constraints, developers must demonstrate compatibility with the constraint or outline appropriate mitigation measures to be provided. One of the listed constraints is flood risk.
- 8.6 Policy 64 specifically relates to flood risk, and requires development to avoid areas susceptible to flooding and promotes sustainable flood management. Development proposals within or bordering medium to high flood risk areas will need to demonstrate compliance with SPP through the submission of suitable information.
- 8.7 Dingwall Business Park lies on the River Peffery Flood Plain, and accordingly an embankment was erected around the perimeter of the Business Park as part of the development of the land for business purposes in the 1980's. The Business Park has since been extended to the west, and a further embankment erected around the newer section (around the year 2000). It has recently transpired that these embankments do not form a formal flood defence, although they do provide the properties within the park a certain degree of flood protection. SPP requires that any new developments demonstrate that they avoid areas of flood risk, and any protection offered by informal flood defences is not considered when assessing development located behind or said to be benefitting from them.
- 8.8 A study of the current condition of the flood embankments around Dingwall Business Park and the level of protection they provide was commissioned by HIE in July 2021, and the findings are now available.

- 8.9 This used GIS files of various flood extents to determine the peak water levels around the perimeter of the business park for a variety of flood events. The files contain information on the elevation the water from the River Peffery will reach when it breaches its banks for the various flood events around the business park. These flood extents have been used to create a long section for each embankment at the point where the water level rise appears to meet each of the 4 embankments. This high point for the various events has then been adapted as representing the peak water level.
- 8.10 The major flood related potential failure modes are overtopping, instability of the embankment, and internal erosion.
- 8.11 The flood extents for flood events with an annual exceedance of 1 in 200 AEP, 1 in 200 AEP plus climate change and 1 in 1000 AEP indicate that overtopping of the flood embankment may occur at the far north eastern corner of the business park.
- 8.12 There are a significant number of well-established trees located around the perimeter of the business park. It is considered that their root systems will have had an impact on the properties of the embankment, including the moisture content of the soils and the structure of the soil, causing internal erosion.
- 8.13 Typically, tree toppling would not normally be included in an assessment, unless the trees are very large in proportion to the embankment and the flood reaches the embankment crest. In this case due to the number of large well-established trees located along the crest of the embankments, and the relatively low height of the embankments, there is the potential that if a tree came down during a single event it could lead to a breach of the embankment
- 8.14 Other failure modes which are not deemed credible so have been excluded include slope stability, internal erosion due to a hydraulic structure in the embankment, and internal erosion through the foundation.
- 8.15 The annual probability of failure of the northern embankment is the highest. This is attributed to overtopping and internal erosion due to the presence of tree roots. There is also a low spot in the far north eastern corner of the site (6.50m AOD).
- 8.16 During the 1 in 200 AEP event water will enter the business park at the north eastern corner of the site. The long sections for all events modelled indicate the water level rise could reach 6.70 m AOD and 7.11m AOD over the eastern and northern embankments respectively. Typically an overtopping depth of 300mm can be sufficient to fail an earth embankment if the duration of the event is long enough. With the low point identified at 6.5m AOD, and a water level rise of 6.7m and 7.11m AOD, there is a high probability of failure of the embankment. The longer the time of overtopping, the higher the probability of scour erosion. The model has assumed that the overtopping will be for 2 hours, which is a favourable condition, as it could be for much longer.
- 8.17 There is also a possibility of failure from internal erosion due to the presence of tree roots. There are a significant number of large trees on the crest of the embankments resulting in a possibility of a continuous defect. If dead trees were present in any of the embankments this number would increase further.

- 8.18 The results of this assessment show that the existing embankments do not offer the level of protection required for any future development. In addition, ownership of the flood bunds lies with various adjoining landowners around the periphery of the park so maintenance can not be controlled.
- 8.19 SPP says (para 263) that in medium to high flood risk areas (greater than 1:200 years) land in built up areas may be suitable for industrial and commercial development provided flood protection measures to the appropriate standard already existing and are maintained, are under construction, or are a planned measure in a current flood risk management plan. Informal flood defences should be considered as if the scheme did not exist. Furthermore, the planning system should prevent development which would have a significant probability of being affected by flooding.
- 8.20 Accordingly, this proposal fails to comply with SPP, and also fails to accord with Policies 30 and 64 of the Highland-wide Local Development Plan, since it lies within an area at risk of flooding. Although there are informal flood prevention measures in situ in the form of embankments which offer a degree of protection to existing property, these do not afford the required level of protection for future development. Furthermore, the embankments are within assorted ownership, with no measures in place to ensure their maintenance and prevent further deterioration. As such, any development behind the flood bunds could be vulnerable to flooding and accordingly can not be supported.

Design and Layout

- 8.21 The proposal occupies a corner site, at the junction of Inchrory Drive and Druimchat View within the wider context of Dingwall Business Park. The plots to the west and to the north are as yet undeveloped. There is existing landscaping around the roadside boundaries.
- 8.22 The existing units on the Business Park are of assorted design and materials. This proposal is for a steel portal framed industrial unit, finished in dark grey profiled cladding with red doors and windows. This is not atypical of some of the existing units in the vicinity, and the design and materials can be supported.
- 8.23 This complies with Policy 28 which assesses development according to a number of factors, including demonstrating sensitive siting and high quality design in keeping with the local character, and making use of appropriate materials.
- 8.24 The unit will be well set back within the plot, providing space for additional landscaping to reinforce the existing roadside trees. A condition should be used to ensure that this is achieved, should the proposal be otherwise found capable of achieving support.
- 8.25 The new access off Druimchat View will terminate at the west plot boundary, and an indicative access is shown continuing from this location into the adjoining plot. It is appropriate that access to the adjoining plot is maintained to facilitate its development at some point in the future. This area is, however, also shown as the

turning head for this site, and requires to be within the application site boundary so that it can be ensured that it is provided as part of the development of this unit, and is thereafter available for the users of this unit.

- 8.26 Similarly, there is no provision for waste or recycling bins marked on the submitted plans. There is sufficient space for this to be provided. A condition can therefore be used to require these details to be submitted to and approved in writing by the Planning Authority should the development be otherwise found capable of support.
- 8.27 The plans show 7 car parking spaces along the building frontage. Transport Planning do not object to this proposal. However, cycle parking is not shown, but is required. A condition should be used to require the provision of covered cycle parking close to the building entrance, to help encourage the use of sustainable forms of transport including cycling.
- 8.28 No details of surface water drainage are shown. This should comply with the requirements of SuDS, and care should be taken to ensure that water does not run from the site onto the public road. Again, a condition can be used to require this to be provided.

Referral to the Scottish Ministers

- 8.29 Should planning approval otherwise be granted, this application will require to be notified to the Scottish Ministers, under Category 2 of Planning Circular 3 2009, pursuant to the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009. This is due to the objection of SEPA to the proposals, in its role as a national government agency

Other material considerations

- 8.30 There are no other material considerations.

Matters to be secured by Section 75 Agreement

- 8.30 None

9. CONCLUSION

- 9.1 The principle of development in itself is acceptable and compatible with other existing land uses. However the proposal fails to comply with SPP, and also fails to accord with Policies 30 and 64 of the Highland-wide Local Development Plan, in that it lies within an area at risk of flooding. Although there are informal flood prevention measures in situ in the form of embankments, these do not afford the required level of protection. Furthermore, the embankments are within assorted ownership, with no measures in place to ensure their maintenance and prevent further deterioration. As such, any development behind the flood bunds could be vulnerable to flooding and accordingly can not be supported.
- 9.2 The Council in conjunction with HIE and SEPA are actively exploring options to try and resolve the matter however at this juncture there is no clear timetable for securing a resolution. Accordingly the Planning Service is not in a position to recommend the application for approval.

9.2 All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

10. IMPLICATIONS

10.1 Resource: Not applicable.

10.2 Legal: Not applicable.

10.3 Community (Equality, Poverty and Rural): Not applicable.

10.4 Climate Change/Carbon Clever: Not applicable.

10.5 Risk: Not applicable.

10.6 Gaelic: Not applicable.

11. RECOMMENDATION

Action required before decision No issued

Notification to Scottish Ministers	No	Unless minded to approve contrary to Officer recommendation
------------------------------------	----	--

Conclusion of Section 75 Obligation	No
-------------------------------------	----

Revocation of previous permission	No
-----------------------------------	----

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

Reasons for Refusal

1. The proposal fails to comply with Scottish Planning Policy, and also fails to accord with Policies 30 and 64 of the Highland-wide Local Development Plan, in that it lies within an area at risk of flooding. Although there are informal flood prevention measures in situ in the form of embankments, these have been found to be substandard and do not afford the required level of protection. Furthermore, the embankments are within assorted ownership, with no measures in place to ensure their maintenance and prevent further deterioration. As such, development behind the flood bunds could be vulnerable to flooding and accordingly can not be supported.

REASON FOR DECISION

All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

Designation: Area Planning Manager North

Author: Susan Hadfield

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 - 2020-01-MRH-102 Location Plan

Plan 2 - 2020-01-MRH-101 Proposed Floor Plan

Plan 3 - 2020-01-MRH-100 Proposed Elevation Plan

Plan 4 - Flood Embankment Risk Assessment Report Dingwall
Business Park