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J Kelly  
Highland Council  
Sent By E-mail

Our ref: NOD-270-002  
Planning Authority ref:20/00967/FUL

4 October 2023

Dear John Kelly

## DECISION NOTICE

### **TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 CALLED IN PLANNING APPLICATION FOR THE ERECTION OF A FARMHOUSE AT LAND NORTH-WEST OF KINGS STABLES COTTAGE, WESTHILL, INVERNESS, IV2 5BP (the ‘proposed development’) (20/00967/FUL)**

1. This letter contains the Scottish Ministers’ decision on the above called in application for planning permission by Mr C Wares and Mrs D Wares.
2. The application for planning permission was made to the planning authority, the Highland Council, on 28 February 2020. On 22 March 2023 Highland Council were minded to grant the application subject to notification to the Scottish Ministers. On 26 April 2023 the application was called in by direction under section 46 of the Town and Country Planning (Scotland) Act 1997 “in view of the proposed development’s potential impact on a historic battlefield of national significance.”
3. The application was considered by written submissions which took place on 01 June, 06 June and 27 July 2023, and a site inspection which took place on 28 June 2023, conducted by Mr Mike Croft, a reporter appointed by the Scottish Ministers for that purpose.

### **Reporter’s Recommendation and Scottish Ministers’ Decision**

4. The reporter has recommended that the application be refused. Scottish Ministers have carefully considered all the evidence presented and the reporter’s conclusions and recommendation. The Scottish Ministers agree with the reporter’s recommendation and refuse planning permission, for the reasons summarised below and as detailed in the reporter’s report. A copy of the reporter’s report (‘the Report’) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **The Reporter’s Report**

5. The reporter’s findings are set out in 88-127 of the report. The reporter’s overall conclusions and recommendations are set out in 128 – 137 of the Report. The reporter recommends that planning permission is refused.

## Legal and Development Plan Context

6. Under the terms of section 25 of the Town and Country Planning (Scotland) Act 1997 all applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, the Scottish Ministers agree with the reporter's findings at paragraph 16 that the development plan for this case comprises:

- National Planning Framework 4 (NPF4, 2023),
- the Highland Wide Local Development Plan (HWLDP, 2012),
- the Inner Moray Firth Local Development Plan (IMFLDP, 2015) and
- the supplementary guidance associated with those two LDPs, notably Housing in the Countryside and Siting and Design Supplementary Guidance (2013), Developer Contributions Supplementary Guidance (2018), and Rural Housing Supplementary Guidance (2021).

7. The Scottish Ministers agree with the reporter's findings at paragraph 17 that the other relevant policy and guidance documents include:

- Inner Moray Firth Proposed Local Development Plan 2 parts one and two,
- Historic Environment Policy for Scotland,
- the entry for Culloden in the Inventory of Historic Battlefields,
- Managing Change in the Historic Environment: Historic Battlefields (HES, revised 2020),
- Culloden Muir Conservation Area Character Appraisal and Management Plan (2015),
- Inner Moray Firth Landscape Character Assessment (1998), and
- Inverness District Landscape Character Assessment (1999), parts one and two.

8. With respect to any buildings or other land in a conservation area, Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. As the site is located within the Culloden Muir Conservation Area, Ministers have given special attention to this matter.

## Proposal

9. The proposed development is 4-bedroom single storey house with a double garage. The application site is part of a larger area of agricultural land (25.62 hectares) which the applicants purchased in 2015. The applicants have a large agricultural building, granted permission in 2017, about 500 metres east of the proposed farmhouse location. A track from the road provides vehicular access to this building. The junction of the track with the road would be reconfigured, and the track would be extended to the proposed house.

10. The application site lies within the countryside, outwith the Settlement Development Area of Inverness and within a "Hinterland" area of the Inner Moray Firth Local Development Plan. It is also located within the Culloden Battlefield, which is included in the Inventory of Historic Battlefields, a list of nationally important battlefields in Scotland. The application site is within the 2015 extension of the Culloden Muir Conservation Area, originally designated in 1968. There is a listed building – Kings Stable Cottage – just beyond the south-eastern corner of the applicants' holding. Culloden Wood lies north of the application site.

## Main Issues

11. The Scottish Ministers agree with the reporter's findings at paragraph 18, that the main considerations in deciding this application are:

- the operational need for the proposed farmhouse;
- its impact on the Culloden Battlefield; and
- its impact on the Culloden Muir Conservation Area.

### Main issue 1: The operational need for the proposed farmhouse

12. The Scottish Ministers agree with the reporter that there is a clear conflict between the application project and NPF4 policy 17 (rural homes). The Scottish Ministers agree that the required business viability justification (NPF4 policy 17(a)(v)) for the proposed farmhouse does not exist. HWLDP policy 35 says that the usual presumption against countryside housing does not apply to a house that is essential for land management or family purposes related to the management of the land. The council's rural housing supplementary guidance 2021 says that where a house is proposed for a new rural business there needs to be robust supporting information including predicted profit and loss forecasts for operating the business for five years as evidence as to how it will be financially viable and sustainable for a period of at least five years. NPF4 policy 17(a)(v) (one of 8 criteria to be met for new homes in rural areas) states "is demonstrated to be necessary to support the sustainable management of a viable rural business or croft, and there is an essential need for a worker (including those taking majority control of a farm business) to live permanently at or near their place of work" (Paragraph 88). The proposal only arises from the carving-out of a portion of an existing farm, and there is no evidence to suggest there were problems in what is now the applicants' holding being farmed in that way. The process of selling-off has continued, and the danger of a precedent being set from a permission in this case is considerable. The Scottish Ministers agree with the reporter that although HWLDP policy 35 does not include a business viability requirement and would allow a house essential for land management, that has to be set in the context of NPF4 policy 17 and the council's Rural Housing Supplementary Guidance (Paragraph 128).

13. Scottish Ministers agree with the reporter's findings in paragraphs 89-96 that there is a clear policy requirement for viability and that includes a financial viability stretching some time into the future. The Scottish Ministers agree with the reporter's finding in paragraph 93 that if the enterprise is not itself viable, the applicant's case for a dwelling on their farm unit in relation to close supervision and similar requirements (which, in isolation, the reporter would regard on a fine balance as properly made) must fall. Put another way, a dwelling here cannot be justified because it can be regarded as essential for a non-viable enterprise.

14. The Scottish Ministers agree with the reporter's conclusions in paragraph 96 that the proposed development does not accord with NPF4 policy 17 and HWLDP policy 35.

### Main issue 2: The impact of the proposed house on the Culloden Battlefield

15. The Scottish Ministers agree with the reporter's findings on issue 2 (the battlefield) as summarised in paragraph 129. Scottish Ministers agree that the key requirement is in NPF4 policy 7(j) (the report references paragraph 74 but Ministers note it is actually set out in paragraph 73). NPF4 policy 7(j) states that: "Development proposals affecting nationally important Historic Battlefields will only be supported where they protect and, where appropriate, enhance their cultural significance, key landscape characteristic, physical remains and special qualities." This is intended to clarify, not to materially change, the

previous Scottish Planning Policy. The Scottish Ministers agree that HWLDP policy 57 (the reporter's report references paragraph 44 but Ministers note it is actually set out in paragraph 43) requires a similar assessment. HWLDP policy 57 requires all development proposals to be assessed taking account of the level of importance and type of heritage features, the form and scale of the development, and any impact on the feature and its setting. Scottish Ministers agree with the reporter's findings that the significance of the Battle of Culloden is huge. The visual and cultural impact of the proposed farmhouse, bearing in mind the estimates of where the Jacobite lines were placed in the battle, would be very small or non-existent in observations from the core of the battlefield near the visitor's centre. But those impacts would tend to increase with decreasing distance between the observer and the proposed house location. The reporter's observations from a point just within Culloden Wood very close to the application site indicate clearly to him that the proposed house would intrude very much at close quarters into a view towards the Jacobite lines. Jacobite soldiers may well have approached the battle, and fled from it, through this area. Screening the house from there would also involve screening the view of the battlefield. The Scottish Ministers agree that the policy test is a severe one, and the application project does not meet it (paragraph 129).

16. The Scottish Ministers agree with the reporter's conclusions in paragraph 110 that the proposed development does not accord with HWLDP policy 57, NPF4 policy 7(j), HEP2. HEP4, HES's Managing Change Guidance Note: Historic Battlefields and the Culloden Muir Conservation Area Character Appraisal and Management Plan.

### **Main issue 3: The impact of the proposed house on the Culloden Muir Conservation Area**

17. The Scottish Ministers agree with the reporter's findings on issue 3 (conservation area) as summarised in paragraph 130. The Scottish Ministers agree that the main development plan policies in this respect are NPF4 policy 7(d) and HWLDP policies 29, 57 and 61 (the reporter's report references paragraphs 38 and 112 but the correct paragraphs are 37 and 111). NPF4 policy 7(d) says that development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced, and that relevant considerations include the historic character of the area. HWLDP policy 61, says new developments should be designed to reflect the landscape characteristics and special qualities identified in the Landscape Character Assessment of the area in which they are proposed. The Scottish Ministers agree with the reporter's findings that the battlefield is a major component of the conservation area and, apart from acceptance of design details for the proposed house, they agree the reporter's adverse conclusion on the application project must be reflected here too. The Scottish Ministers agree with the reporter's finding that from this, bearing in mind the historic character of the area, the application project would not preserve or enhance the character of the conservation area (paragraph 138). The Scottish Ministers agree with the reporter in paragraph 113 that the proposed development would not preserve or enhance the character of the conservation area.

18. The Scottish Ministers agree with the reporter's overall findings that the proposal does not accord with the relevant provisions of the development plan (paragraph 131).

### **Other material considerations**

19. The Scottish Ministers agree with the reporter's findings, as summarised in paragraph 132, that on issue 1 (operational need), in its assessment of the application the council has apparently sought none of the long-term financial information referred to in its Rural Housing

Supplementary Guidance. The reporter sees nothing here to offset his view of the project as detailed in paragraph 128 of his report (assessment against the development plan) and the Scottish Ministers agree.

20. On issue 2 (the battlefield), and, as summarised by the reporter in paragraph 133, the Scottish Ministers agree that it is important to acknowledge that the impact of the proposed farmhouse on those parts of the battlefield most visited would be very limited. The archaeological work carried out for the applicants in support of their application and the prospect of further such work if permission were to be granted is acknowledged. But Ministers agree that the harmful implications of siting the house so close to an important view of the battlefield just within Culloden Wood remain. The Scottish Ministers agree that the reporter's adverse view of the application project (paragraph 129 of his report), is supported by HES's Policies for Managing the Historic Environment and its Managing Change Guidance Note: Historic Battlefields (paragraph 97 of the reporter's report) and by the Culloden Muir Conservation Area Character Appraisal and Management Plan (see paragraph 78 of the reporter's report).

21. The Scottish Ministers agree, as summarised by the reporter in paragraph 134, that that there are no other significant material considerations in relation to main issue 3 (conservation area) or in relation to the listed Kings Stable Cottage.

## **Conclusion**

22. In summary, the Scottish Ministers agree with the reporter that for the reasons set out above, the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would justify granting planning permission.

## **Formal Decision**

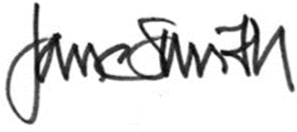
23. Accordingly, for the reasons detailed in the reporter's report and as summarised in this letter, the Scottish Ministers hereby refuse planning permission for the proposed erection of a farmhouse at land north-west of kings stables cottage, Westhill, Inverness, IV2 5BP (the 'proposed development').

## **Right to Challenge**

24. This decision of Scottish Ministers is final, subject to the right conferred by Sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997, of any person aggrieved by the decision to apply to the Court of Session within 6 weeks of the date of this letter. If such an appeal is made, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

25. A copy of this letter and the reporter's report has been sent to The Highland Council. Those parties who lodged representations will also be informed of the decision.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jane Smith', written in a cursive style.

Jane Smith  
Scottish Government  
Planning Decisions