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Our ref: NOD-HLD-006

17 November 2020

Dear ██████████

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
PLANNING APPLICATION 18/04194/FUL (CONVERSION OF STEADING TO
FORM HOUSE AND ERECTION OF OUTBUILDINGS AMENDED DESIGN (TO
PLANNING PERMISSION 15/02941/FUL) LAND 120M SW OF CULCHUNAIG
FARMHOUSE, WESTHILL, INVERNESS ('the Proposed Development')**

1. This letter contains Scottish Ministers' decision on the above planning application submitted to The Highland Council by MRH Design on behalf of ██████████ on 8 October 2018.
2. On 21 November 2019, Scottish Ministers issued a Direction calling in the application for their own determination. The Direction was given due to the Proposed Development's potential impact on Culloden Battlefield which is a battlefield of national importance.
3. The application was considered by procedure notice with an accompanied site inspection plus an unaccompanied inspection of the wider battlefield and further written submissions, by ██████████ BA (Hons) BTP, MRTPI, a Reporter appointed by Scottish Ministers for that purpose. The Reporter's report ('the Report') was submitted to Scottish Ministers on 14 April 2020.

Reporter's Recommendation and Scottish Ministers' Decision

4. The Reporter has recommended that planning permission should be granted, subject to conditions. Scottish Ministers have carefully considered all of the evidence presented and the Reporter's conclusions and recommendations. For

the reasons given below, Scottish Ministers disagree with the Reporter and refuse planning permission for the Proposed Development. A copy of the Reporter's report is enclosed. All references to paragraph number, unless otherwise states, are to the Report.

The Reporter's Report

5. The reporter's conclusions and recommendations are set out in chapter 6. The reporter recommends that planning permission is granted subject to seven conditions.

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 development plan comprises:
 - the Highland-wide Local Development Plan adopted in 2012;
 - the Inner Moray Firth Local Development Plan adopted in 2015; and
 - supplementary guidance on a range of topics, adopted by The Highland Council.
7. The site sits within the rural hinterland of the city of Inverness.
8. The Reporter considers in paragraph 2.1 that there are no site specific policies contained within the Inner Moray Firth Local Development Plan that have relevance to the proposal.
9. 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.
10. In addition to the development plan, several Historic Environment Scotland (HES) policy statements and guidance notes are relevant to the consideration of the proposal. These include the Historic Environment Policy for Scotland, and Managing Change in the Historic Environment: Historic Battlefields, which is a non-statutory guidance note.

Main Issues

11. Scottish Ministers agree with the Reporter (paragraph 6.2) that, having regard to the provisions of the development plan, the main issues in this case are: siting and design; the historic environment and archaeological significance; infrastructure; protected species; the planning history of the site; the impact on the conservation area; national policy and advice; consultation responses; and representations by third parties.

Consideration

Development Plan & Policy Context

Siting and design

11. In terms of siting and design, the Reporter considers, in paragraphs 6.7 and 6.8, that the proposal is compatible with Policies 35: 'Housing in the Countryside (Hinterland areas)', 28: 'Sustainable design', 29: 'Design quality and place-making'; and Policy 57: 'Natural, built and cultural heritage' of the Highland-wide Local Development Plan, and associated topic-based supplementary guidance.

12. The site sits within the hinterland of Inverness therefore the Council's LDP Policy 35 'Housing in the Countryside (Hinterland areas)' and the associated Housing Supplementary Guidance applies. Ministers agree with the Reporter in paragraph 6.7 and 6.8 that the conversion of a traditional building which is currently derelict and unused, provides the policy exception to the presumption against housing in the countryside (Policy 35). Policy 35 states 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'.

13. Ministers do not agree with the Reporter in paragraph 6.7 that the Proposed Development accords with LDP Policies 28 'Sustainable design' and 29 'Design quality and place-making' and the associated Sustainable Design Supplementary Guidance. Ministers note that Policy 28 states that developments will be assessed on the extent to which they (amongst other things) impact on cultural heritage, particularly within designated areas; and demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environment. The policy states that developments which are judged to be significantly detrimental in terms of the listed criteria will not accord with the LDP. Policy 29 states that new development should be designed to make a positive contribution to the architectural and visual quality of the place in which it is located, where appropriate. Applicants should demonstrate sensitivity and respect towards the local distinctiveness of the landscape, architecture, design and layouts in their proposals.

14. Ministers consider that the Proposed Development – including the erection of 3 new outbuildings (a garden room, a garage and a greenhouse) and the formation of hardstanding to accommodate six car parking spaces and a trailer set down area – represents overdevelopment of the site in what is a very sensitive part of Culloden Battlefield. Ministers acknowledge that the proposed conversion of the existing steading would retain a traditional stone building that is falling into disrepair. However Ministers consider the redevelopment of this site, as proposed, would have an unacceptable suburbanising effect upon the existing countryside near to the core of Culloden Battlefield. Ministers consider that the area has high sensitivity to all types of development due to the national historic significance and cultural associations of the battlefield. Ministers consider that the Proposed Development would result in cumulative negative visual and landscape impacts upon the local character of this part of the battlefield and would have an adverse effect on the character and appearance of the Culloden Muir Conservation Area. These impacts are discussed further below, and Ministers judge the Proposed Development to be significantly

detrimental in terms of the criteria set out in Policy 28. Given those impacts and the policy requirements set out in the previous paragraph, Ministers consider that the Proposed Development fails to comply with LDP Policies 28 and 29 and is not in accordance with the LDP.

Historic environment and archaeological significance

15. Scottish Ministers agree with the Reporter in paragraph 6.10 that the development site is clearly in an area of high historical significance, given its inclusion within the battlefields inventory boundary for the Battle of Culloden and the Culloden Muir Conservation Area. The site sits to the south of the core of Culloden Battlefield and Ministers have taken into account Historic Environment Scotland (HES) advice, as stated in paragraph 6.10, that the ground around the steading would have been on, or near to, land passed over by Government dragoons on a flanking manoeuvre near to the end of the battle and associated with fighting during the Jacobite retreat.

16. Ministers acknowledge HES's consultation advice that, in their view, the Proposed Development would not significantly change the character of this sensitive part of the battlefield landscape. HES goes on to state however (para 6.36), that it may result in localised impacts and direct impact upon physical remains associated with the battle.

17. The proposal is located within a rural location which makes a significant contribution to the cultural and historic landscape of Culloden Battlefield. Ministers consider that due to the sensitivity of this part of the battlefield near the core, the redevelopment of the site as proposed would result in a change to this part of the rural landscape and setting which would be detrimental to its character and appearance by suburbanisation of this sensitive part of Culloden Battlefield. It is considered that this part of the battlefield is so sensitive, that it cannot support any additional development beyond the sensitive conversion and adaptation of the existing steading. Ministers do not consider that the Proposed Development is in keeping or responding sympathetically to the specific features of the site and surrounding area.

18. Ministers disagree with the Reporter's findings, at paragraph 6.13, that whilst the proposed outbuildings would result in some change on the site, overall the proposal would not significantly alter the character of this part of the battlefield. Ministers consider that the visual impact of the proposed outbuildings would further alter this sensitive part of the landscape to the detriment of the character of the Culloden battlefield. Ministers consider that the Proposed Development would result in a significant and adverse cumulative impact on the character of this sensitive part of the battlefield, by adding to the effect of previous alterations of the surrounding landscape caused by human activity and development. These are noted by the Reporter as including the introduction of commercial plantation woodland, roads, farm houses and associated agricultural buildings, boundary fences and overhead transmission lines.

19. The first 'planning policy' within the Culloden Muir Conservation Area: Character Appraisal and Management Plan states that there will be a presumption against all development within the designated Battlefield as defined by the Inventory unless the proposal accords with the relevant policies of the adopted Development Plan (or other such guidance as may be relevant) and would result in a development commensurate

with the principal designation of the site as a Battlefield. The policy mentions that such 'commensurate' development could include proposals for the repair, reuse and conversion of a redundant traditional building, of a sensitive design and finish, "subject to any subsequent impact being considered appropriate in the context of the Battlefield designation".

20. However, as noted above, the Proposed Development does not just include the conversion of the existing steading – it also includes 3 new outbuildings and extensive hardstanding. Ministers consider that the Proposed Development does not accord with the relevant policies of the development plan. Ministers also do not consider that the Proposed Development would be 'commensurate' as expected by the Character Appraisal and Management Plan. Ministers consider the development as proposed would be an insensitive intervention within the Conservation Area. The Proposed Development would not be in keeping with the character of the Conservation Area nor with the special qualities of the battlefield. Instead, it would reduce the ability to appreciate the course of the battle within this area. Ministers consider that the visual impact of the Proposed Development, resulting in overdevelopment and suburbanisation of the site, would cause a high level of harm to the significance that the battlefield draws from its rural setting, a key component of its significance and character that allows the battlefield to be experienced by the public.

21. Ministers agree with the Reporter at paragraph 6.15 that any potential impacts on archaeological remains could be mitigated through a planning condition. Ministers also agree with the Reporter at paragraph 6.16 that there would be no direct or indirect impact on nearby scheduled monument sites as a result of the proposal.

National Policy

22. Ministers disagree with the Reporter, at paragraph 6.35, that the proposals do not conflict with the national policy and guidance, designed to protect historic battlefields and conservation areas. Scottish Planning Policy (SPP) requires planning authorities to protect, conserve and where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields. Ministers do not agree with the Reporter's view in paragraphs 6.16-17 that the proposal would not have a significant adverse impact on Culloden Battlefield or on the character or appearance of the Culloden Muir Conservation Area. Ministers also disagree that the proposal would comply with Policy 57 'Natural, built and cultural heritage' and the 'Highland Historic Environment Strategy' Supplementary Guidance.

23. The Historic Environment Policy for Scotland (HEPS) sets out the need to ensure that decisions affecting the historic environment are informed by an inclusive understanding of its breadth and the cultural significance of the heritage asset. HEPS is supported by HES guidance notes including 'Managing Change in the Historic Environment: Historic Battlefields'. That guidance note sets out the importance, when assessing proposals, of identifying less tangible values such as the contribution that a battlefield can make to a sense of place or cultural identity, noting that these issues can be appreciated at a local, national and even international level. Ministers consider that the area has high sensitivity to all types of development due to the national historic significance and cultural associations of the battlefield, as well as the rural character of the area. Ministers consider that the Proposed Development would result in a

cumulative negative impact on the special sense of place and character apparent to many visitors to the inventory battlefield due to the visual impact on the special qualities of the area. As such, the Proposed Development is contrary to LDP Policy 57; HEPS and the HES Historic Battlefields guidance. SPP requires development within conservation areas to preserve or enhance their character. For the reasons explained above, Ministers do not consider the Proposed Development would do this.

24. SPP states (at para 33) that where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

25. As the Local Development Plan is more than five years old, Ministers are applying the principle set out in paragraph 33 of SPP, and regard the presumption in favour of development that contributes to sustainable development as a significant material consideration in this case. Whilst Ministers consider that the Proposed Development would have benefits, including through bringing a derelict building back into use, Ministers consider that the adverse benefits on the battlefield and conservation area would significantly and demonstrably outweigh those benefits.

Other considerations

26. Ministers agree with the Reporter's findings in paragraph 6.19 in respect of infrastructure and in paragraph 6.24 in respect of protected species.

Planning history of the site

27. Ministers have taken into account at paragraphs 6.26 - 6.27 that the proposal is an amended design of the previous planning application (Ref: 15/02941/FUL), granted consent by The Highland Council on 2 Oct 2015. The Council confirm that the previous permission was extant when the most recent application was submitted (6 September 2018) albeit, the application was not formally validated until 8 October 2018. Ministers acknowledge the Reporter's consideration that the application, as validated, is technically outwith the three year period by a matter of days. The Reporter considers that the recent planning history for very similar proposals together with the development plan position remaining unchanged since the 2015 consent, should weigh in favour of the current proposals. Ministers acknowledge that the original planning permission has since lapsed. Ministers issued a direction in March 2019 to cover notification of non-householder planning applications within historic battlefields due to increased public concern over new development within Culloden Battlefield. This direction was not in place at the time the original planning permission was made and is the direction under which Ministers were first alerted to this proposal within Culloden Battlefield.

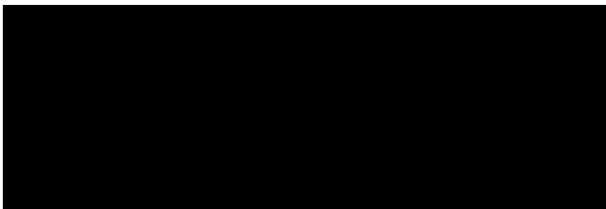
Conclusions and Scottish Ministers' Decision

28. Scottish Ministers do not accept the Reporter's conclusions set out in Chapter 6. Ministers consider that the Proposed Development would have an adverse impact on the character of the inventory battlefield and would not preserve or enhance the character or appearance of the conservation area. Ministers also consider that the Proposed Development is not in accordance with the development plan overall, being contrary to Policies 35, 28 and 29 of the Highland-wide LDP. The Proposed Development is also contrary to the overarching principles of HEPS, in particular the Managing Change in the Historic Environment: Historic Battlefields guidance note. Accordingly, for the reasons set out above Scottish Ministers hereby refuse planning permission.

29. 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 hereof. On any such application the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the appellant'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.

30. 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

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Chief Planner