

PE1696/B

Scottish Government submission of 23 October 2018

Thank you for your e-mail of 17 September 2018 about Petition PE1696, calling on the Scottish Parliament to urge the Scottish Government to prevent the development on battlefields as listed on Historic Environment Scotland's Inventory of Historic Battlefields.

The Committee have written to the Scottish Government to:

- Seek the views of the Scottish Government in relation to the action called for in the petition;
- Clarify what is meant by the term 'statutory consultee' in the planning system and what this means in terms of the role Historic Environment Scotland (HES) has in relation to planning decisions in Scotland; and,
- To provide details of the number of planning decisions that have been refused by Scottish Ministers due to objections raised by Historic Environment Scotland.

In regard to the first point, the Scottish Government notes that the petitioner considers that there is no statutory protection for battlefields listed in the HES Inventory. The Scottish Government does not consider this to be the case. Where planning permission would be required for development on a battle field, there is a statutory requirement for the planning authority to consult with HES. Furthermore, where the planning authority are minded to grant consent to an application which HES have formally objected to, or where HES have asked for conditions to be attached which the planning authority do not intend to include, there is a statutory requirement on the planning authority to notify the Scottish Ministers, who have the power to 'call-in' the application for their own determination.

In addition to the statutory requirement to consult HES and to notify the Scottish Ministers where required to do so, Scottish Planning Policy sets out that planning authorities considering applications for development relating to historic battlefields should consider protecting, conserving and enhancing their key landscape characteristics and special qualities.

When determining a planning application, planning authorities are required to determine the application in accordance with the development plan for the area, unless there are material planning considerations that would justify a departure from the plan in that case. The effect of a proposed development on a battlefield listed in HES's Inventory would be a material consideration as would be the guidance set out in Scottish Planning Policy.

The Planning (Scotland) Bill currently before the Scottish Parliament includes proposals which, if agreed by the Parliament, will combine the Scottish Planning Policy with the National Planning Framework and give enhanced status to the combined document as an integral part of the development plan.

In addition to the requirement set out in the direction for the Scottish Ministers to be notified where HES formally object to an application which the planning authority intends to approve, it is an option for the Scottish Ministers to issue a direction requiring them to be notified for a case where HES has not objected. Such a Direction was issued on 4 October this year in relation to a proposed development at Culloden Muir. For the committee's information, I attach a copy of the direction which requires Highland Council to notify the planning application to Ministers should they be minded to grant consent. That would allow Scottish Ministers the opportunity to decide whether to call in the planning application for their own determination.

The Committee sought clarification of the term 'Statutory Consultee' and what this means in relation to the role of HES. It is not a term defined in planning legislation, but is commonly used to refer to any person, authority or body who, in certain circumstances, must be consulted by a planning authority before they determine a planning application.

The requirement to consult HES prior to determining an application for development on a historic battlefield is set out in regulation 25 and Schedule 5 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, as amended by The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015.

Finally, the Committee has requested details of the number of planning decisions that have been refused by Scottish Ministers due to objections raised by Historic Environment Scotland.

Since 2015, Scottish Ministers have been notified of eight cases where HES, or its predecessor Historic Scotland, raised objections; however none of those related to applications on historic battlefields, but rather to other interests in the historic environment. Of those cases, three were called in for determination by the Scottish Ministers and in all three cases the applications were subsequently refused.

The Scottish Ministers have also called in for their own determination an appeal against refusal of permission for a development at Bannockburn. HES objected to the application. This appeal has yet to be determined

I hope this information is useful to the Committee.

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Your ref: 18/01399/FUL
Our ref: NOD-HLD-004
4 October 2018

Dear Mr Kelly

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
CHANGE OF USE FROM EQUESTRIAN CENTRE TO HOLIDAY, LEISURE AND
HOSPITALITY FACILITIES INCLUDING 13 LODGES, CAFÉ/SHOP,
RECEPTION, LAUNDRY AND RESTAURANT ON LAND AT TREETOPS
STABLES, FAEBUIE, CULLODEN MOOR, INVERNESS**

1. I am directed by Scottish Ministers to draw your attention to the enclosed Direction, which they have given in exercise of the powers conferred on them by Regulations 31 and 32 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.

2. This Direction has been made in the light of the proposal's potential impact on a historic battlefield of national significance.

3. Accordingly, Scottish Ministers take the view that it would be appropriate for The Highland Council to notify an application by HRI Architects on behalf of Ms L. Macdonald for the change of use from equestrian centre to holiday, leisure and hospitality facilities including 13 lodges, café/shop, reception, laundry and restaurant on land at Treetops Stables, Faebuie, Culloden Moor, Inverness (application number 18/01399/FUL). This Direction does not commit Ministers to calling in any such application, but it does reserve their right to intervene.

Yours sincerely
LYNDSEY MURRAY
Planning Decisions

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

**THE TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS)
(THE HIGHLAND COUNCIL) (CHANGE OF USE FROM EQUESTRIAN CENTRE
TO HOLIDAY, LEISURE AND HOSPITALITY FACILITIES INCLUDING 13
LODGES, CAFÉ/SHOP, RECEPTION, LAUNDRY AND RESTAURANT ON LAND
AT TREETOPS STABLES, FAEBUIE, CULLODEN MOOR, INVERNESS)
DIRECTION 2018**

The Scottish Ministers, in exercise of the powers conferred on them by
Regulations

31 and 32 of the Town and Country Planning (Development Management
Procedure) (Scotland) Regulations 2013 and all other powers enabling them in
that behalf, hereby give the following direction:-

1. In the event that The Highland Council is minded to grant planning
permission to HRI Architects on behalf of Ms L. Macdonald for the change
of use from equestrian centre to holiday, leisure and hospitality facilities
including 13 lodges, café/shop, reception, laundry and restaurant on land at
Treetops Stables, Faebuie,
Culloden Moor, Inverness (application number 18/01399/FUL) they shall send to
Scottish Ministers the following information:-

(a) a copy of the planning application, accompanying plans and associated
documentation (e.g. transport/retail assessment), together with the full address
and post-code of the site to be developed;

(b) a copy of any environmental statement accompanying the application or, where
an environmental statement has not been prepared:

- a copy of any screening opinion given by the planning authority in
respect of any Schedule 2 development (as defined by regulation 2 of
the *Environmental Impact Assessment (Scotland) Regulations
2011*); and

- a copy of any strategic environmental assessment that is relevant
to the development;

(c) a copy of any appropriate assessment relating to the application, carried out
under Part IV of the Conservation (Natural Habitats, &c.) Regulations 1994.

(d) copies of all observations submitted by consultees and all representations and
petitions received, together with a list of the names and addresses of those who
have submitted observations/made representations (including details of any
petition organiser if known). Where 'pro-forma' representations are received, only
one copy example need be submitted, but all names and addresses must be
provided. Copies of petitions should be submitted, but only the organiser or first
named should be included in the list of names and addresses;

(e) the planning authority's comments on the consultees' observations and on
representations received, together with a statement explaining how the authority
has taken these into account;

- (f) the planning authority's reasons for proposing to grant planning permission, including, where relevant, a statement setting out the reasoning (i) behind the authority's decision to depart from the development plan, and/or (ii) for taking the decision it has, in light of any objections received.
2. The Scottish Government would expect, wherever possible, that the information is provided electronically by means of a link, or series of links to the relevant case file on the authority's website.
 3. Subject to paragraph 4 below, where The Highland Council is minded to grant planning permission for the development referred to in paragraph 1 above they shall not do so before the expiry of the period of 28 days beginning with the date notified to them by Scottish Ministers as the date of receipt by them of the information supplied by the Council in accordance with paragraph 1 of this Direction.
 4. Scottish Ministers may, during the said period of 28 days, notify The Highland Council in writing that an earlier or later date shall be substituted for the date of expiry of that period; and if on expiry of the period of 28 days or such other date as has been notified to them the Council have not received from Ministers a Direction under Section 46 of the Town and Country Planning (Scotland) Act 1997 requiring the application to be referred to Ministers instead of being dealt with by the Council, then the Council may proceed to determine the application.
 5. This Direction is given to The Highland Council.
 6. This Direction may be cited as the Town and Country Planning (Notification of Applications) (The Highland Council) (change of use from equestrian centre to holiday, leisure and hospitality facilities, including 13 lodges, café/shop, reception, laundry and restaurant on land at Treetops stables, Faebuie, Culloden Moor, Inverness) Direction 2018.

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4 October 2018