

In the end we were only allocated 4mins. Only the points in highlight were presented to the planning meeting. John Hart managed to get out the key reservation on the Common Good Land but the Chairman alleged the information was “not valid in the context of this planning application” (?)

Sandown Planning Hearing: May 12th 2009-05-08

Submission of Objections from Nairn Residents Concern Group.

1. Who are we?

A group of residents who wish to see the development of Nairn achieved through a design and development process which-

- Is transparent to all & is clearly supported by the community
- Has been significantly influenced by meaningful consultation
- Is sympathetic to the existing locale & in keeping with the original Local Plan

2. Contents:

- Principle Objections wrt the Application
- Objections based on the utilisation of Common Good Land
- Photo Illustration showing relative scale of a three level block of flats.
- Closing Q & A From Archives Related to SPP3

A) Principle Objections

1. The Development Brief is quoted as a material consideration in the planning report-yet according to a letter of 25th Nov 2008 from Mr MacLeod (Planning) to Mr Maguire, Dr Stuart Black, and Mr Richard Hartland; the Development Brief was never formally approved by Committee. Therefore, the application from the developer (and the Area Planning & Building Services Managers report before you today) has been, in our view, prepared in response to an invalid brief.
2. Conditions set out in the planning report to today’s hearing wrt Local Roads, Water, Sewage, S.U.D.S. and E.I.A et al should form part of the application-as outlined in the planning Scotland Act 2006: and not be set aside as a reserved condition.
3. **The Local Plan defines the housing allocation at Sandown as 15.4 hectares, while the figures in this application before you indicates that the housing proposal occupies 23.71 hectares (a 50% increase in land usage for housing). This is a significant departure from the Local Plan and the additional 8 hectares should therefore await the publication of the Highland-wide Development Plan-this Autumn.**

4. The Planning Officers assertions in the report regarding dwelling allocations needs to be supported by a proven, evidence based planning needs assessment and this is not documented or referenced in the report. ie where is the Housing Needs Demand Assessment?
5. Sustainability aspects of the development (Policy Doc G2) are not defined.
6. The EIA for the proposed Cawdor/Delnies development identified the Waste Water Treatment plant as running at 27% overcapacity which prompted a residents letter to the Chief Executive of SEPA who responded - "SEPA will continue to work with other stakeholders and statutory bodies to ensure that the appropriate infrastructure is in place in time to accommodate the proposed increased population which is currently being planned for Nairn".
7. Interaction with adjacent sites has not been considered in a co-ordinated manner as required by the Development Brief. The boundary of the proposed Cawdor development is approx 12 feet from the proposed Sandown Boundary: yet school, road, drainage, water supply and sewage issues for Sandown are being decided in isolation.
8. The Sandown Development Brief states that the Nairnshire Local Plan has identified land for 540 houses with related community facilities as one of its priorities for the whole town (not solely for Sandown Common Good Land)
9. The Sandown Development Brief is also deemed to be flawed because it did not explicitly define the 550 houses currently proposed: it simply defined a density per hectare. The figures in the brief of 12.5 homes per hectare is now proposed as 16.5 per hectare (a 30% increase) & the 18 and 27/hectare figures for courtyard/terrace homes is now proposed as 33.6 (an increase of up to 70%)
10. In Section 7.7. of the Planning Report being considered today there are five separate totals of dwelling allocations quoted in the Planning Report (140-from the local plan, 192-basis unknown , 230-outline planning, 330-basis unknown and 550-planning application-and we know that the development brief identified 540 for the whole town of Nairn & its hinterland not just Sandown Common Good Land. The local authority has a statutory responsibility to update Local Plans every 5years, but this has not been done. Therefore, there is no evidence of the sequential update of the Local Plan (the primacy document) and in turn the updated Development Brief? Where are the changes formally documented, signed off and recorded?

11. Report Conclusion: Sect8 & Para 7.7: What plan are Highland Council weighing material considerations against? The Development Plan as referenced in section 7.7 or the Structure Plan referenced in 8.1. or the Draft Development Brief referenced in 5.3. as a Material Consideration. We understand that House of Lords has ruled that the Local Development Plan has primacy in this and every case. The Structure Plan referenced is a Highlands-wide Document-it does not support or inform the Draft Development Brief- this is the role of the Local Plan.
12. We have a perception of lack of transparency in the decision making process with respect to this proposal. At least one attempt has been made by this group to access the complete bid data pack: the supporting development proposals and report N-15-07 via the Freedom of Information Act. Although an application was made (May 5th) we have had no response to date.

The number of houses proposed in 2007 was 550 and despite 2 years of discussion and consultation it is still 550 (and the planning report notes (section 1.2) that “the overall development concept is unchanged”).

If the number of 550 was always non-negotiable (ie a given) from a commercial perspective then this should at least have been stated as part of the consultation process: *and if it was known and not declared then we contend that the consultation process was flawed and its intent compromised.* Either way in terms of the “barriers” quoted by the Scottish Govt in PAN81 our experience ranks as a good example.

13. Finally, we have two questions (1) Do the missives for the Sandown Land sale allow the price to be renegotiated by the developer? (2) If so does the Regional Council commit to rebid/re-open the tendering process?
- **Mr Chairman:** These are our key objections and therefore not exhaustive so we reserve the right to detail our further objections at a later date.
 - **In conclusion,** we earnestly request that you withhold outline planning permission-until (a) the points made in our submission are properly investigated and (b) the current housing proposals are restructured in line with the original Local Plan and/or until the Inner Moray Firth Plan is finalised.

I would now like to pass the section of our submission covering objections related to use of the Common Good Land over to my colleague Mr John Hart.

(B) Objections based on the utilisation of Common Good Land

- The Appraisal does not address (but the Planning Committee and the Hearing need to consider) the particular significance of this application insofar as it relates to Common Good Land. It's not just that the Council has a financial interest. Councillors as Trustees of the CGF have a fiduciary duty as custodians of the land on behalf of the people of the Royal Burgh of Nairn.
- We believe that there are some serious issues related to the Council's stewardship of this CG land, which need to be considered by the Committee, and will certainly attract the attention of Ministers if - as the Planning Office himself recognises - the matter goes to Ministers. Time does not permit much elaboration; but the main points are...

1. Trustees failed in their fiduciary duties to consider registering Nairn CGF as a charity in order to gain tax benefits for the fund. This is why currently 7 Common Good Funds in Scotland registered as charities with HMRC and were then transferred under OSCAR in 2005. Had Nairn CGF Trustees followed such a course then the Fund and its assets would be inviolate. A Johnston Common Good Fund Community Councillor Trustee tells that Renfrewshire CC would like nothing more than to get its hands on the Common Good Fund and its assets but as a Charity they cannot. We understand that OSCAR are currently investigating irregularities in the administration of Scottish Borders Council CGFs, one of the 7 registered as a charity, because the Council have failed to draw up a Constitution and an up to date assets register.

2. The HC Principal Accountant reported (Report 21/94 Agenda Item 7.1) to the Nairn Area Committee on the 28 May 1996 that:

"The value of the fixed assets of the Common Good Fund as at 31 March 1995 was £306,303. This comprised of heritable property:

a) Realisable Assets

Sandown Lands (currently on seasonal let for agricultural purposes) + a number of others

b) Non-Realisable Assets

Lands at Salt March, *The Maggot*, East Beach and Caravan Park + a number of others

Heritable property within a CGF is owned legally by the local authority by holding legal title. **BUT** local authorities are constrained in various ways in how they administer such property and in how they are permitted to dispose of it since it is held on behalf of the inhabitants of the Burgh. In this sense it belongs to those inhabitants in the same way as property legally owned by a Trust belongs to the beneficiaries or bank account held by a parent on behalf of a child belongs to that child.

The report to the Nairn Area Committee, failed to advise Councillors how they would know that an asset is **realisable** or **non-realisable**. Investigations to date with HC under FOI have not produced the original disposition of title of the land in question to examine what burdens are attached to it. The title deed originally vesting Sandown Lands in the CGF may contain a condition preventing its use for anything other than in the interest and perpetual use of the inhabitants for their recreation.

If the asset is alienable and thus the CGF may dispose of it, the Council is obliged to replace like-for-like, or, pay into the CG Fund a value for the alienated property. This value must be independently

assessed. Councils have in the past used compliant valuers and CGF Trustees are advised to get an unbiased separate valuation.

On the other hand non-alienable, then as Highland Council is responsible for the sale proposal, there should have been an application to the Court under section 75 of the Local Government (Scotland) Act 1973, with an accompanying evaluation, as part of that application, to establish best value in the interests of the people of the Burgh of Nairn. Furthermore, this evaluation should be justified on the principles of an arms length transaction.

By the same token we are concerned about the Missives between HC and the Developer. These may be conditional in allowing a re-negotiation of the sale price on the grounds of reduced land values caused by the current financial crisis. With current land value write-downs of some 75-80% against 2005 valuations the CGF might only receive less than £5M for this land. In such circumstances it would seem appropriate for the Trustees, in exercising their fiduciary responsibilities on behalf of the CGF to return to the tender stage.

3. In 1995 Councils were required to produce Asset Registers and value CGF assets at current values not at historical values. Have Trustees demanded that Council Officers commit resources to this task?; clearly not and while we understand that it is now underway; a 14 year delay is total dereliction of duty and can be interpreted as a good way of obfuscating issues of historical ownership viz-a-viz alienation or non-aliaenation. However, Local Authorities have to manage CGF assets within the confines of two pre-Union Statutes, which have as yet not been repealed, namely:

- **The Common Good Act 1491**
- **The Burghs Act 1578/1587**

These acts establish together with a raft of common law that the funds are to be used for the benefit of the people of the old Burghs. It is clear that the meaning is the benefit of the burgh rather than a wider objective in a Council's region.

4. Sandown Lands form part of the Common Good lands of Nairn, which were granted to the inhabitants of Nairn by the Burgh Charter of 1589. We know that all the heritable property assets of a CGF are owned by the local authority by holding legal title. Thus, HC took control over the Nairn Common Good Fund in 1995. However, HC did **not register Sandown Lands as the Proprietor until as late as the 19 Oct 2006. This is another dereliction of duty.**

OR was it because HC could not get title because of HC's administrative blunder that allowed what should have been just a grazing right turn into a full agricultural lease necessitating the eviction of the leaseholder (so as to be able to go ahead with this development), for an agreed sum of £385,000. Furthermore it is understood that this sum and the legal costs in determining it will be recovered by HC from the proceeds of the sale of Sandown Lands. This is illegal because those proceeds belong to the Common Good Fund and the mistake was not made by the Trustees. It is very possible that Councillors are not fully aware of these facts because we have correspondence between a Nairn Citizen and the then Chief Executive, who refused to advise you as Trustees of your fiduciary responsibilities in this specific matter.

We consider it illegal for HC to retain an amount from the proceeds of the sale to cover the cost of the developers unwillingness to contribute to the A96 Protocol, as recommended in the Report at para 7.8 of the Area Planning Officers Report.

5. The direction of the CGF were the responsibility of the Burghmeisters. The Burgh Association of Scotland confirms this point and this has a direct bearing on the way funds are administered, especially in respect of issues of domicile.

The Burghmeisters or Councillors as we know them today must have a domicile within the Burgh. This has significance as to administrative structures used to govern the CGF. It effectively places the

responsibility on Community Councillors, who by and large do live in the Burghs, not necessarily on Councillors, a larger percentage of which, in Highland Council's case, have by default been made Trustees, but do NOT live anywhere near Nairn.

These are structural issues regarding the management of Nairn CGF, which Highland Council appear to have totally ignored.

6. The Council will argue that they consulted the inhabitants of the Burgh by putting Sandown Lands, having declared them as Common Good Land, into the Local Plan, which was approved Nairn citizens. It was also stated in the Local Plan that it would be developed as sports fields, community centre and 110 houses. If the Council allows an application for 5 times as many dwellings to go through, they must be obliged to ask the inhabitants of the Burgh whether they agree with that fivefold inflation of dwellings on their land.

7. It would be a betrayal of the trust placed on the Council as custodians of the Nairn Common Good land to make a decision on this application without adequately addressing these concerns. We need to be satisfied that there has been, and is, proper oversight and use of this Common Good asset for the benefit of the people - not the people of the Highlands, or the people of the city of Inverness or the region, but for the people of Nairn. We do not believe we have been well served in this case. There are far too many unanswered questions still on the table.

8. Finally, it may be suggested that in order to avoid conflict of interest the 4 Nairn Councillors will not vote on this application. However, in a letter dated 6 Nov 03 Ref: FA/MM-CS17 the Highland Council Area Manager states that **ALL** Highland Councillors are Trustees. The clear logic, on this basis and that of residence, is of course that **NONE** of the Councillors on the Planning Committee should vote on this development application, because of clear conflict of interest.

We wish these points clarified and register it as a MAJOR objection until investigated by the Councils legal department

(This completes our submission)

Closing Quote From the Highland Council's response to the draft Scottish Planning Policy SPP3- Planning for Housing.

Q3. Do you agree it is desirable to achieve a more robust and consistent approach to the assessment of housing need and demand? Does the approach sets out in chapter two provide an appropriate mechanism for this?

Response: The Highland Council agrees that there is a need for a standardised methodology for the assessment of housing need and demand. SPP3 proposes that the assessment of overall housing requirements for inclusion in development plans be based on an assessment and analysis of the local housing market through Strategic Housing Need and Market Assessment (SHNMA). We note that, usefully, the SHNMA guidance has recently been issued and will be

revised if necessary in response to the consultation on Draft SPP3.

New Points to Build In.

1. We expect that the full range of options for generating economic well being in our community are examined-not just a single assumption that moving in bodies will solve the problem-it will not. Historically we have existing sectors to build on and develop eg Service sector posts eg health and tourism: Remote Working opportunities for consultants, artisist,designers etc; Agriculture-instead of building on it and losing both traditional skills and land for ever-lets look at development options
2. We expect that the next planning hearing will require the developer to detail the, in our view, currently superficial reference to the perceived economic benefits to Nairn and Highland Council. The developer continually referenced the creation of 200jobs based on a £100million investment. There needs to be more transparency on both the breakdown of this figure and exactly how many of the quoted jobs are transient. To date there has been no hard evidence to suggest a long term and material benefit to Nairn. The provision of houses does not create long term jobs in a community. As a minimum any developer making these claims should be required to justify the numbers at the planning hearing If this is ignored there is great potential for the council to be left with a housing scheme and all its costly social and maintenance problems and not much else when the various profit elements and suppliers costs have been taken out.