



Report to the Scottish Ministers

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) (SCOTLAND) ACT 1997

Report by Andrew Fleming, a reporter appointed by the Scottish Ministers

- Case reference: NOD-HLD-006
- Site Address: Land south west of Culchunaig Farmhouse, Westhill, Inverness, IV2 5BS
- Application for planning permission, ref. 18/04194/FUL dated 08 October 2018, called-in by notice dated 21 November 2019
- The development proposed: Conversion of steading to form house and erection of outbuildings (amended design to planning permission 15/02941/FUL)
- Date of site visit: 24 January 2020

Date of this report and recommendation: 14 April 2020



CONTENTS

Page

Summary Report	2
Preamble	8
Chapters	
1. Background	9
2. Planning Policy Context	12
3. The Case for the Applicant	18
4. The Case for the Council	19
5. The Case for the Other Parties	21
6. Conclusions and Recommendations	24
Appendices	
Appendix 1: Suggested Conditions	
Appendix 2: List of those making representations	

Abbreviations

GSDC	Group to Stop Development at Culloden
HEPS	Historic Environment Policy for Scotland
HES	Historic Environment Scotland
LDP	Local Development Plan
NTS	National Trust for Scotland
SEPA	Scottish Environment Protection Agency
SG	Supplementary Guidance
SPP	Scottish Planning Policy
SuDS	Sustainable Drainage Systems



Conversion of steading to form house and erection of outbuildings (amended design to planning permission 15/02941/FUL) at land south west of Culchunaig Farmhouse, Westhill, Inverness, IV2 5BS

• Case reference	NOD-HLD-006
• Case type	Called-in application for planning permission
• Reporter	Andrew Fleming
• Applicant	Mr and Mrs Hornby
• Planning authority	The Highland Council
• Other parties	Those who submitted written representations are listed in Appendix 2
• Date of application	8 October 2018
• Date case received by DPEA	21 November 2019
• Methods of consideration and dates	Written submissions and accompanied site inspection on 24 January 2020 Unaccompanied inspection of surrounding area on 24 January 2020
• Date of report	14 April 2020
• Reporter's recommendation	Grant planning permission

Background

The site is located to the south west of Culchunaig Farmhouse, accessed via a private track from the B9006 road to the north west. It is south west of the National Trust for Scotland owned section of the Culloden Battlefield. The existing steading building is derelict and unused and the proposal is to convert the steading to a house and to erect three outbuildings including a garden room, garage and greenhouse. The proposal is an amended design of a previous planning application (Ref: 15/02941/FUL), granted consent by The Highland Council. The amendments to the design and layout include the removal of the detached studio which is now included within the main building; the relocation of the garden room within the site; and amendments to window placement and design detailing.

There were no objections to the planning application from either council departments or external statutory consultees. The application was considered by the council's South Planning Applications Committee which agreed to grant planning permission subject to 6 conditions contained in the report to committee together with an additional condition providing for the inclusion of a passing place on the access road. The Scottish Ministers decided to require the application to be referred to them for determination and a Direction was issued to the council on 21 November 2019. This was given due to the proposed development's potential impact on Culloden Battlefield, which is a nationally important battlefield.

Planning policy context

The development plan covering the site comprises the Highland-wide Local Development Plan adopted in 2012 and the Inner Moray Firth Local Development Plan adopted in 2015. The council has adopted supplementary guidance on a range of topics which also form part of the development plan. There are no site specific policies contained within the Inner Moray Firth Local Development Plan that have relevance to the proposal. Key policies in the Highland-wide Local Development Plan include policies 35, 28, 29 and 57. Topic based supplementary guidance provides supporting detail to the related plan policies.

According to Local Development Plan policy 35: 'Housing in the countryside (Hinterland areas)', the council will presume against housing in the open countryside of the hinterlands around towns. This presumption may be overcome if a proposal meets at least one of a number of exceptions to the policy. This includes if the proposal involves the conversion or reuse of traditional buildings or the redevelopment of derelict land. Policy 28: 'Sustainable design' sets out the requirement for all development to be designed in the context of sustainable development and climate change. Policy 29: 'Design quality and place-making' seeks a high quality of design in development within both urban and rural parts and the creation of high quality environments in which people can live and work.

According to policy 57: 'Natural, built and cultural heritage', all development proposals will be assessed taking into account 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. For features of local/ regional importance (including conservation areas), the council will allow developments if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource. For features of national importance (including historic battlefields), the council will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource.

In addition to the development plan there are several policy statements and guidance which are relevant to the consideration of the proposal. The Historic Environment Policy for Scotland is a policy statement which directs decision-making that affects the historic environment. In order to achieve this, it sets out a series of principles and policies for the recognition, care and sustainable management of the historic environment. Managing Change in the Historic Environment: Historic Battlefields is a non-statutory guidance note which provides advice for those considering the impact of proposed development on sites appearing in the Inventory of Historic Battlefields. According to the guidance "Including a battlefield in the Inventory is not intended to be simply a barrier to development. The intention is to identify an area of added protection where particular consideration must be given to impacts on the site."

Historic Environment Scotland is responsible for designating sites in the Inventory of Historic Battlefields which is a list of Scotland's most important historic battlefields. Battlefields are landscapes over which a battle was fought. The Battle of Culloden was added to the Inventory in March 2011 and is significant as the last pitched battle fought on the British mainland. Scottish Planning Policy (SPP) (2014) sets out national planning policies for the development and use of land. In respect of Battlefields, SPP states that "Planning authorities should seek to protect, conserve and, where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields."

The case for the applicant

The applicant points out that it was a previously approved application and considers the current proposal to be a robust and sympathetic application. The renovation follows the configuration of the u-shaped steading and embraces contemporary design but incorporates and uses natural materials and reuse of masonry down takings where possible. The existing buildings have been surveyed and are considered suitable for conversion. The proposed design and siting of the proposal is sympathetic to the landscape and closely follows the original traditional buildings. All surveys and investigations requested have been completed.

The proposal is in accordance with the policies of the Highland-wide Local Development Plan and supplementary guidance for housing in the countryside and neither Historic Environment Scotland or the National Trust for Scotland objects to the proposal. Given the sensitivity of the location, the steading conversion remains as close as possible to its original footprint.

The case for the council

The proposal is for amendments to a previously granted permission for the conversion of an existing, relatively intact, traditional steading building for residential use and the erection of associated outbuildings. The report to committee of 17 September 2019 considers that the proposal represents a sensitive approach to the redevelopment of a traditional building in an area of high cultural and historic significance. Due to its sympathetic design and use of high quality materials, the development will retain much of its historic character while bringing the traditional building back into active use, without impacting upon the ability to understand and appreciate Culloden Battlefield. The proposal is not assessed as having any adverse impact on the character or appearance of the Culloden Muir Conservation Area.

The report to committee of 17 September 2019 indicated that the previous application was extant when the new application was submitted. The existence of such a recent planning permission is a material consideration in the determination of this application. The council consider that the proposal accords with the principles and policies contained within the Development Plan and that it is acceptable in terms of all other material considerations. The council's South Planning Applications committee of 17 September 2019 agreed to grant planning permission for application ref: 18/04194/FUL subject to the conditions contained in the report to committee together with an additional condition providing for the inclusion of a passing place on the access road.

The case for the other parties

The representations submitted, with the exception of one, object to the proposal. A sizeable majority of these representations are simply against the principle of any development within the Inventory battlefield site boundary. Several representations raise specific concerns such as visual impact, impacts on the conservation area and on the battlefield and these are addressed under the various headings in Chapter 6 of the report.

Detailed objections were submitted by GSDC and Dr Duffy. GSDC refer to the planning application history for the site and insist that planning permission was not extant when the application for renewal was validated. Dr Duffy submitted a paper on the action around

Culchunaig Farm during the battle of Culloden. Dr Duffy provides details in respect of the battle site and the 'Culchunaig houses', which would have been in existence at the time of the battle but which no longer exist as physical structures above ground level.

Conclusions and recommendations

Development plan

The application requires to be determined in accordance with the development plan unless material considerations indicate otherwise. As the site is located within the Culloden Muir Conservation Area, special regard is to be had to the preservation or enhancement of the conservation area.

Given that the proposal involves the conversion of a traditional building which is currently derelict and unused, I consider that this provides the policy exception to the presumption against housing in the countryside (Hinterland areas). I consider that retaining the original building form, the siting of the proposed outbuildings within the site, the proposed use of materials and design features, overall, the proposal respects local character whilst creating a quality environment. I therefore consider that the proposal accords with Policies 35, 28 and 29 of the Highland-wide Local Development Plan.

The 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 steading, subject of this report, was clearly not in existence when the Battle of Culloden took place and is thought to have been built on the site of the earlier farmstead. The proposal reuses the existing steading (retaining its footprint and much of its form) and retains the form of the historic plot around it. Whilst the proposed outbuildings would result in some change on the site, given their scale, position within the site, design and use of materials, I am satisfied that, overall, the proposal would not significantly alter the character of this part of the battlefield

Views of the steading would not be significantly altered and as a result, the proposal would not disrupt one's ability to appreciate the landscape of this part of the battlefield or the locations of important features to the battle such as the Culwhiniac enclosure. In this context, it is also important to note that the landscape surrounding the site has evolved over the centuries, altered by human activity including the introduction of commercial plantation woodland, roads, farm houses and associated agricultural buildings, boundary fences and overhead transmission lines. I am reassured in reaching these conclusions, given my observations during my inspection of the site and surrounding area. I was unable to obtain any view of the application site or steading building from within the National Trust for Scotland owned section of the Culloden Battlefield. I was also unable to obtain any proper view of the steading building from the nearest road to the south and east (B851).

Whilst the evidence from archaeological survey work to date is that the site is not archaeological rich in respect of the battle, at the same time it cannot be ruled out that there are features contemporary with the battle. Should planning permission be granted for the application, it would therefore be prudent to complete the survey work referred to above which could be required by condition.

In accordance with policy 57: 'Natural, built and cultural heritage', I consider that the proposal would not have an unacceptable impact on the conservation area nor would it

compromise the battlefield heritage resource. I therefore consider that it accords with policy 57.

The site is not in an area susceptible to flooding. Waste water is proposed to be treated by provision of a septic tank and surface water discharge is proposed to be dealt with via a soakaway system. No physical constraints have been identified that would impact on the proposal. In light of the above, I consider that the proposal accords with policies 30, 64, 65 and 66 of the Highland-wide local development plan. A bat survey identified the presence of one bat roost within the building. Barn owls have also been spotted using the building. A Species Protection Plan identified a number of mitigation measures which would minimise impacts on protected and other species. Subject to a condition requiring the implementation of the measures identified in the Species Protection Plan, the proposal accords with policy 58: 'Protected species'.

In light of the above, I consider that the proposal accords with the development plan.

Other considerations

Planning permission was granted on 2 October 2015 (reference: 15/02941/FUL) for the conversion of the existing steading to form a dwelling, and erection of outbuildings. Much has been made of the timescales for the submission of this latest application, given that the 2015 consent was required to commence within three years of the date of that permission otherwise that permission would lapse. No development on site has taken place to date. 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. The application, as validated, is technically outwith the three year period but only by a matter of days. The planning context had not changed in that period and in fact the development plan context has remained unchanged since the first application was approved by the council in 2015. I consider that the recent planning history for the site, for very similar proposals, is something that should weigh in favour of the current proposals, particularly given the development plan position has remained unchanged since the 2015 consent.

The site is located within the boundary of the Culloden Muir Conservation Area. Conservation Area status does not mean that new development is unacceptable, but care must be taken to ensure that new development will not adversely impact on the character or appearance of the area. Culloden Muir is defined by the remains of the prehistoric activity in the Nairn valley at Clava, the Battle of Culloden and the development of the railway and larger farmsteads of the Victorian period. According to the conservation area character appraisal, traditional cottages and dwellings were built to one and a half or two storeys and natural slate was the most prevalent roofing material. The larger farmsteads include some larger houses and associated barns, byres, steadings and stables all again primarily constructed of stone with slate roofs. As outlined above, I consider that the proposal would not harm the character or appearance of this conservation area and hence would preserve its character and appearance.

Whilst the site is located within the Inventory of Historic Battlefields and within a conservation area, national policy and advice do not preclude development from taking place within such locations. There is simply a greater level of scrutiny afforded to any development proposal so that it does not cause unnecessary damage or affect the integrity of the historic battlefield or cause harm to the character and appearance of the conservation

area. I am satisfied that the proposal does not conflict with the national policy and guidance, designed to protect such cultural assets.

There are no objections to the proposal from any statutory consultees. I am reassured that neither Historic Environment Scotland or the National Trust for Scotland object to this application and that neither body objected to the previous application 15/02941/FUL.

A sizeable majority of representations are against the principle of any development within the Inventory battlefield site boundary. Several representations raise specific concerns including visual impact and impact on the Battlefield which are addressed in the main report. GSDC question the validity of the application as referred to above. Whilst Dr Duffy, in his representation, provides details from various sources, these do not add significantly more to the appreciation of the battle site than already exists or to its importance given its existing status. Historic Environment Scotland confirm 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. Despite this knowledge, HES do not object to the proposal.

I am also conscious that there are many detailed contemporary records and maps relating to the Battle of Culloden and that this has stimulated considerable subsequent research and archaeological investigation, which according to the Inventory of Historic Battlefields, makes it the best understood battlefield in Scotland. This is not to say that we no longer require to research this site. On the contrary, I have suggested a particular condition, should this application be granted approval and the investigations/ work that would be required as part of that suggested condition would provide a further opportunity to extend our knowledge and appreciation of the archaeology of a part of the wider battlefield site.

I attach, at Appendix 1, a set of suggested conditions. This includes all the proposed conditions from the report to committee of 17 September 2019, with the exception of the council's proposed condition 3. I am satisfied that there is sufficient space within the site to accommodate adequate off street parking/ turning and that condition 3, proposed by the council, is not necessary in order to enable the development to proceed. Given the nature of the proposal and the likely number of vehicles that could be expected to access the proposed dwelling on a regular basis, I consider that a passing place on the access track to the site is not necessary in order for the proposal to be able to proceed. I have therefore not included a condition in relation to this matter. I have added a proposed condition 1 in order that the development is implemented in accordance with approved plans and a proposed condition 2 which requires the implementation of mitigation measures identified in the Species Protection Plan.

Recommendation

I recommend that planning permission is granted subject to 7 conditions.

Scottish Government
Planning and Environmental Appeals Division
4 The Courtyard
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR

DPEA case reference: NOD-HLD-006

The Scottish Ministers
Edinburgh

Ministers

In accordance with my minute of appointment, dated 3 January 2020, I conducted an accompanied site inspection in connection with an application for planning permission for the conversion of a steading to form a house and the erection of outbuildings (amended design to planning permission 15/02941/FUL). The site is south west of Culchunaig Farnhouse, Westhill, Inverness. The application was subject to the Town and Country Planning (Reference of Application) (The Highland Council) (Conversion of steading to form house and erection of outbuildings (amended design to planning permission 15/02941/FUL) Westhill, Inverness) Direction 2019. This Direction was given due to the proposed development's potential impact on Culloden Battlefield, which is a nationally important battlefield.

I decided to issue a Procedure Notice, issued on 12 February 2020, to the applicant and the council to request further information. The applicant was invited to provide a response to any of the material that was before the council during its consideration of the application. Both the applicant and the council were invited to comment on material that was submitted by other parties following the application's call in for determination by the Scottish Ministers. I also sought clarification from the applicant and the council regarding the land ownership certificate forming part of the application form for planning application (18/04194/FUL).

I conducted an accompanied site inspection of the application site on 24 January 2020. I also conducted, on 24 January 2020, an unaccompanied inspection of the surrounding area including the National Trust for Scotland owned section of the Culloden Battlefield.

My report, which is arranged on the basis of the case for the applicant, the council and other parties, takes account of the various statements, plans, drawings and documents submitted by the parties.

CHAPTER 1: BACKGROUND

Site location and description

1.1 The site is located to the south west of Culchunaig Farmhouse, accessed via a private track from the B9006 road to the north west. It is located to the south west of the National Trust for Scotland owned section of the Culloden Battlefield.

1.2 The existing steading building is derelict and unused. It includes walls to wallhead level and a largely intact roof. The stone built, slate roofed building comprises a central one and a half storey main section with two single storey elements forming a u-shaped building with an internal courtyard. The steading is enclosed by a stone dyke wall and post and wire fence with several mature trees and scrub vegetation around the perimeter of the site.

The proposed development

1.3 The proposal is to convert the steading to a house and to erect three outbuildings including a garden room, garage and greenhouse. The proposal is an amended design of a previous planning application (Ref:15/02941/FUL), granted consent by the Highland Council. The amendments to the design and layout include the removal of the detached studio building which is now included within the main building; the relocation of the garden room from the west side of the steading to an area north west of the steading; and amendments to window placement and design detailing. There is a proposed parking area and proposed areas laid out as lawn with the majority of the site to be given over to 'wild' grass (flowering). Existing perimeter trees and scrub vegetation are proposed to be retained.

Consultation responses

1.4 *The Highland Council's Historic Environment Team (Archaeology)* – Further information was required before an assessment could be made on the proposed layout, therefore survey work was requested prior to determination. This required recording of the steading and archaeological investigations to ascertain the presence or absence of remains, features or deposits associated with the battle and/or earlier prehistoric activity. An archaeological survey was carried out in early 2019. Due to the condition of the ground only a 50% metal detecting survey could be completed across the site. Due to the nature and condition of the building, further recording will be required to complete the works during any consented site clearance (to remove vegetation and building rubble). The trial trenching noted disturbance from clearance and dumping across the site but succeeded in finding the footings of the earlier buildings. However, other than an interesting farm building with notable survival of fittings and features (such as early 20th century graffiti), nothing of note or relating to the Battle of Culloden was identified. It still cannot be ruled out that features contemporary with the battle survive on the site; but the evaluation has shown that the potential for this is low. Further work would be required for any consented development here and this would have to include completing the building recording along with a precautionary watching brief on site clearance (including a sweep of removed spoil with a metal detector). Pre-commencement conditions can be applied.

1.5 *The Highland Council's Transport Planning Team* – No objections or comments.

1.6 *The Highland Council's Community Services (Contaminated Land)* – No objections. The site has had a previous use as an agricultural building therefore the standard

questionnaire (redevelopment of agricultural buildings and farm steadings) required to be completed by the applicant. Following receipt of the completed questionnaire by the applicant, the Contaminated Land Team concluded that no conditions were required.

1.7 *The Highland Council's Flood Risk Management team* – No objections or comments.

1.8 *Historic Environment Scotland* – Do not object. The Battle of Culloden was a significant event in Scotland's national story. The proposed development would not significantly change the character of this sensitive part of the battlefield landscape. It may, however, result in more localised impacts and directly impact upon physical remains associated with the battle. HES therefore recommend this potential is investigated prior to determination of the application in order for mitigation to be developed as appropriate. However, mitigation to avoid or reduce impacts is likely to be possible and therefore HES do not object to the application.

1.9 The farmstead, known as 'Culchuinach', comprised a group of buildings as shown on the 1st edition Ordnance Survey map surveyed in the late 1860s. The second edition OS map surveyed in 1903 suggests that the group of buildings were replaced by the existing steading and a new dwelling to the northeast, now labelled 'Culchunaig'. It is possible that some physical remains of the earlier farmstead exist below ground. 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. The archaeological potential of the area is therefore relatively high and the topsoil could contain remains relating to the battle.

1.10 The proposed development would convert an existing but derelict steading to a dwelling. It would create three new structures in the same plot as the steading and involve the creation of hard surfaces. The enclosure around the steading would be converted to a garden. It remains easy to appreciate the topography of this part of the battlefield and the likely locations of important features. The proposed site appears in views across the battlefield. While the conversion would result in some noticeable changes to the steading, because it retains the steading and its footprint and the form of the historic plot around it, it is unlikely to result in a significant change to the character of this part of the battlefield. The creation of three, modestly-sized new outbuildings within the proposed development area would result in some change to this part of the battlefield but, again, would be unlikely to substantially alter the topography or disrupt important views, or result in a significant change to the character of this part of the battlefield.

1.11 *National Trust for Scotland* – Do not object. The National Trust for Scotland notes the national importance of the battlefield site within which the proposed development site sits. The Trust feels that the redevelopment of this dilapidated farm steading on the battlefield could be appropriate subject to a number of key historical assessments being undertaken and with good design that sees scale, height and footprint being set out in a similar manner to the existing building, and ideally the same. The Trust recommends a detailed Historic Building Survey be carried out to provide a record and analysis of the existing standing structures on the site along with an assessment of the map evidence for historic settlement at Culchunaig. The services of a professional archaeological contractor should be sought. There is a clear opportunity for further archaeological investigation which may reveal further discoveries which may alter and add to our history of the Muir and the battle. The Trust considers that the proposed redevelopment of this existing but dilapidated building may prove to be appropriate subject to the correct heritage assessments, scale and design.

1.12 *Scottish Water* – No objections. Scottish Water advised that in respect of water there is currently capacity in the Inverness Water Treatment Works. In respect of foul water, there is no Scottish Water waste water infrastructure within the site and that private treatment options would need to be investigated by the applicant.

1.13 *National Air Traffic Control* – No objections or concerns. *NATS Safeguarding* advised that the proposal was examined in respect of technical safeguarding and confirmed that the proposal does not conflict with its safeguarding criteria. Therefore, NATS Safeguarding has no objection to the proposal.

The council's decision

1.14 The application (ref: 18/04194/FUL) for: 'the conversion of steading to form house and erection of outbuildings (amended design to planning permission 15/02941/FUL)' was referred to the Highland Council's [South Planning Applications Committee](#) for consideration on 17 September 2019 due to there being five or more representations. The Area Planning Manager (South) recommended that the committee grant planning permission, subject to 6 conditions. The committee agreed to grant planning permission subject to the conditions recommended in the report together with an additional condition providing for the inclusion of a passing place on the access road.

Call-in by Scottish Ministers

1.15 Under the terms of Section 46 of the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers decided to require the application to be referred to them for determination. Accordingly, a [Direction](#) was issued to the Highland Council, on 21 November 2019, advising that the application was to be referred to the Scottish Ministers for determination. The Direction was given due to the proposed development's potential impact on Culloden Battlefield, which is a nationally important battlefield.

CHAPTER 2: PLANNING POLICY CONTEXT

The development plan

2.1 The development plan covering the site comprises the [Highland-wide Local Development Plan](#) adopted in April 2012 and the [Inner Moray Firth Local Development Plan](#) adopted in July 2015. The council has adopted supplementary guidance on a range of topics which also form part of the development plan. There are no site specific policies contained within the Inner Moray Firth Local Development Plan that have relevance to the proposal. The following policies in the Highland-wide Local Development Plan together with the statutory supplementary guidance are considered to be of relevance to the determination of the application. Non-statutory guidance is also considered alongside the development plan.

2.2 Highland-wide Local Development Plan policy 28: 'Sustainable design' sets out the requirement for all development to be designed in the context of sustainable development and climate change. According to policy 28, proposed developments will be assessed, amongst other things, on the extent to which they: maximise energy efficiency in terms of location, layout and design including the utilisation of renewable sources of energy and heat; make use of brownfield sites, existing buildings and recycled materials; impact on resources including landscape and cultural heritage and demonstrate sensitive siting and high quality design in keeping with local character and the historic and natural environment and in making use of appropriate materials.

2.3 Policy 29: 'Design quality and place-making' seeks a high quality of design in development within both urban and rural parts of the plan area and the creation of high quality environments in which people can live and work. According to policy 29, 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.

2.4 Policy 30: 'Physical constraints' requires developers to consider whether their proposals would be located within areas of constraint as set out in Physical constraints: supplementary guidance. Where a proposed development is affected by constraints detailed in the guidance, developers must demonstrate compatibility with the constraint or outline appropriate mitigation measures to be provided.

2.5 According to policy 31: 'Developer contributions', for development proposals which create a need for new or improved public services, facilities or infrastructure, the council will seek from the developer, a fair and reasonable contribution in cash or kind towards these additional costs or requirements. Such contributions will be proportionate to the scale and nature of the development proposed and may be secured through a section 75 obligation or other legal agreement as necessary. Other potential adverse impacts of any development proposal will normally be addressed by planning condition but may require a contribution secured by agreement.

2.6 According to policy 35: 'Housing in the countryside (Hinterland areas)', the council will presume against housing in the open countryside of the hinterlands around towns as defined on the proposals map. This presumption against housing in the countryside (Hinterland areas) may be overcome if a proposal meets at least one of a number of exceptions to the policy. An exception to this policy (as detailed in Supplementary

Guidance) includes amongst other things: if the proposal involves the conversion or reuse of traditional buildings or the redevelopment of derelict land.

2.7 According to policy 57: 'Natural, built and cultural heritage', all development proposals will be assessed taking into account 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. The policy states that for features of local/ regional importance (including conservation areas), the council will allow developments if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource. For features of national importance (including historic battlefields), the council will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance.

2.8 According to policy 58: 'Protected species', where a protected species may be present on site or may be affected by a proposed development, the council require a survey to be completed in order to establish any such presence and, if necessary, a mitigation plan to avoid or minimise any impacts on the species, before determining the application. The supplementary guidance 'Highland's Statutorily Protected Species' provides advice on establishing which biodiversity issues may be found on a particular site and how to address these issues.

2.9 Policy 64: 'Flood risk' requires that development proposals avoid areas which are susceptible to flooding and promote sustainable flood management. Policy 65: 'Waste water treatment' requires new developments to be connected to the public sewer network although it identifies circumstances where private sewage treatment options will be considered. This includes situations where the proposed development is unable to connect to a public sewer for technical or economic reasons and the proposal is not likely to result in or add to significant environmental or health problems. In such circumstances, the council's preference is that any private system should discharge to land rather than water. Policy 66: 'Surface water drainage' requires that all proposed development is drained by appropriately designed Sustainable Drainage Systems (SuDS). This is in the knowledge that where surface water drainage arrangements in new developments are inadequate, this can cause or worsen localised flooding.

2.10 The [Developer Contributions Supplementary Guidance 2018](#) was adopted on 2 November 2018. This guidance sets out the council's approach to mitigating the impacts of development on services and infrastructure by seeking fair and realistic developer contributions to the delivery of such facilities. This guidance applies to all forms and types of development including single house developments. Development should not unacceptably impact upon existing levels of service provision. Where development, either individually or cumulatively, is identified to have an adverse impact, developers can be asked to provide or make financial contributions towards the delivery of new or improved infrastructure.

2.11 [Flood Risk and Drainage Impact Assessment Supplementary Guidance 2013](#) seeks to improve the design and implementation of developments and their related drainage arrangements. According to the guidance, the council is committed to work with developers to ensure that appropriate development takes place in appropriate locations free from unacceptable flood risk and not liable to exacerbate flood risk elsewhere. The guidance is aimed at helping the council achieve its long term flood management aspirations which

amongst other things include: addressing flood risk issues as early as possible and prior to any development commencement; achieving good-quality and reliable flood risk assessment of proposed development sites; and ensuring that robust drainage design criteria is applied.

2.12 The [Highland's Statutorily Protected Species Supplementary Guidance 2013](#) advises that protected species legislation is intended to protect the populations of species that have been identified at the UK or European level as being rare and/ or threatened and so in need of protection. The focus of the guidance is to explain protected species legislation so that all stakeholders in a development have a clear understanding of their legal responsibilities. According to the guidance, the applicant should determine if protected species are likely to be on a site and if species are present and they will be affected by the proposed development then the applicant should commission or undertake a survey that includes changes to the development or mitigation that would either remove the impact on the protected species present or make the impacts on the protected species licensable. The guidance advises that the presence of protected species does not automatically preclude development from taking place but it does mean that a certain sequence of procedures is required to be followed.

2.13 [Housing in the Countryside and Siting and Design Supplementary Guidance 2013](#) was adopted March 2013 and is particularly relevant to the areas of Highland which fall within the “hinterland of towns” which are the areas under greatest pressure for housing development. According to the SG, the council is committed to raising the quality of development in the Highland countryside and new proposals will be expected to contribute towards this commitment through high standards of site layout, high quality design and the use of appropriate resources. According to the SG, proposals for the conversion and rehabilitation of redundant traditional buildings shall be supported subject to a number of criteria as follows: the building is substantially complete, including having walls intact to wall head level; the building is of a scale that is commensurate with a habitable building without recourse to substantive alterations i.e. any new extensions should not dominate the original building; existing openings are reused where feasible and new openings placed on elevations away from public view; unbroken roof slopes are retained; and the character of the building is not significantly altered to an unacceptable degree.

2.14 [Sustainable Design Guide Supplementary Guidance 2013](#) is intended to encourage the development of high quality and sustainably designed buildings which will minimise impacts on the natural environment, help counter the effects of climate change and also promote greater use of local and renewable materials. According to the SG, taking a sustainable approach to building design is not a new phenomenon. This guidance takes an essentially traditional approach to design in order to deliver buildings that provide a resource-efficient, comfortable and flexible living environment in a sometimes hostile and changeable environment. At the same time this traditional approach can be supplemented by the increasing range of modern, sustainable construction techniques and materials which can help ensure future developments in the Highland Council area are sustainable and of a high quality.

2.15 The SG advises that favouring a traditional approach to design does not mean that only traditionally-designed houses will be supported. On the contrary, innovative approaches to design and the use of sustainable materials will be welcomed, providing the result is sympathetic to the setting of the particular development. The SG also advises that whilst this guidance seeks to improve the quality of design by making new development

more sustainable, it does not seek to prevent development from taking place which meets the needs of local people and businesses.

2.16 The [Highland Historic Environment Strategy Supplementary Guidance 2013](#) has been prepared to ensure that the historic environment is taken into account during the design of future developments and to set a consistent approach to the protection of the historic environment. One of the strategic aims of the guidance relates to battlefields. The aim is that nationally important battlefields are recognised in the development planning process and to ensure that impacts upon them are a material consideration in development management.

Other Highland Council Guidance

2.17 Non-statutory guidance: [Access to single houses and small housing developments](#) (2011) sets out access, road safety and drainage requirements for smaller developments. The council seeks to promote consistent standards for the construction of private accesses where they connect to the public road network and objectives in the guidance include, amongst other things, for the creation of good access visibility and the provision of service bays where appropriate.

2.18 The site is located within the boundary of the Culloden Muir Conservation Area. The conservation area was extended in 2015 and a [Character Appraisal and Management Plan](#) prepared and approved, also in 2015. The purpose of the Conservation Area Character Appraisal and Management Plan is to define the boundary and evaluate the character and appearance of the Culloden Muir Conservation Area, to identify its important characteristics and to ensure that there is a full understanding of what is worthy of preservation.

2.19 According to the appraisal, the area of Culloden Muir has special historic and architectural interest which both pre- and post-date the Battle of Culloden. The international importance of the battle is clear. However, the planning authority did not consider it appropriate to ignore the wider special interest of the area when considering the guidance for Conservation Area designation. Therefore, the 1968 Culloden Battlefield Conservation Area designation has been removed and replaced with a Conservation Area designation based on the wider cultural landscape of Culloden Muir.

2.20 Culloden Muir today is defined by the remains of the prehistoric activity in the Nairn valley at Clava, the Battle of Culloden fought on the plateau of the Muir in 1746 and the development of the railway and larger farmsteads of the Victorian period. According to the conservation area character appraisal, these later cottages and dwellings were built to one and a half or two storeys and natural slate was the most prevalent roofing material. The larger farmsteads include some larger houses and associated barns, byres, steadings and stables all again primarily constructed of stone with slate roofs.

Historic Environment Policy for Scotland (2019)

2.21 The [Historic Environment Policy for Scotland 2019](#) (HEPS) is a policy statement which directs decision-making that affects the historic environment. In order to achieve this, it sets out a series of principles and policies for the recognition, care and sustainable management of the historic environment. It states (page 9) that “Decisions affecting the historic environment should ensure that its understanding and enjoyment as well as its benefits are secured for present and future generations.” It further states that “Changes to

specific assets and their context should be managed in a way that protects the historic environment. Opportunities for enhancement should be identified where appropriate.”

Managing Change in the Historic Environment: Historic Battlefields

2.22 [Managing Change in the Historic Environment: Historic Battlefields](#) is a non-statutory guidance note prepared by Historic Environment Scotland which provides advice for those considering the impact of proposed development on sites appearing in the Inventory of Historic Battlefields. The Battle of Culloden is included in the Inventory of Battlefields (Battlefield reference BTL6), first published in 2011. The application site falls within the Inventory boundary of Culloden Battlefield.

2.23 The guidance note states (page 12) that: “Including a battlefield in the Inventory is not intended to be simply a barrier to development. The intention is to identify an area of added protection where particular consideration must be given to impacts on the site. This should focus on the special qualities and landscape characteristics of the battlefield. Planning authorities have to consider proposals carefully, and determine whether development will significantly detract from the importance of the battle site.”

Inventory of Historic Battlefields – BTL6 Battle of Culloden

2.24 Historic Environment Scotland is responsible for designating sites in the Inventory of Historic Battlefields which is a list of Scotland’s most important historic battlefields. Battlefields are landscapes over which a battle was fought. The inventory is maintained under the terms of the Ancient Monuments and Archaeological Areas Act 1979. The [Battle of Culloden](#) (16 April 1746) was added to the Inventory in March 2011 (Reference BTL6). According to the inventory, the Battle of Culloden is significant as the last pitched battle fought on the British mainland. It was also the last battle of the final Jacobite Rising that commenced on 1745 when Charles Edward Stuart (Bonnie Prince Charlie), grandson of the exiled King James VII and II, arrived in Scotland from France in July and raised his standard at Glenfinnan on 19 August. His aim was to put his father on the throne in place of the Hanoverian George II.

2.25 According to the Inventory, Culloden is one of the most important battles in the history of the British Isles and has international significance. It is the final battle fought on the British mainland, and brings to an end more than half a century of Jacobite conflict, itself played out against a background of wider international wars. Its aftermath transforms the Highlands, bringing to an end the traditional way of life of the area and contributing to the subsequent Clearances. The battle also holds a prominent place within the Scottish cultural legacy, frequently depicted and commemorated in art, music, literature and film. The battlefield itself is one of the most visited tourist sites in the Highlands and the site holds a particular high significance and emotional connection to many within Scotland and to the ancestors of those who migrated from Scotland.

Scottish Planning Policy

2.26 [Scottish Planning Policy](#) (2014) sets out national planning policies for the development and use of land. Paragraph 149 states, in respect of Battlefields, that “Planning authorities should seek to protect, conserve and, where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields.”

2.27 SPP is not just concerned with battlefields and refers to a range of other policy issues including design, archaeology and rural development. Such policy issues are also covered in the development plan so there is no conflict between SPP and the development plan.

CHAPTER 3: THE CASE FOR THE APPLICANT

3.1 According to the applicant, the proposal is to renovate the existing steading to form a family home with permission sought for the renewal of the existing consent. The renovation follows the configuration of the U-shaped steading and embraces contemporary design. This is particularly in the roof detailing but incorporates and uses natural materials including a slate roof and reuse of masonry down takings where possible. The renewal includes the previous granted outbuildings (garage, garden room and greenhouse) with associated parking, lawns and landscaping.

3.2 According to the applicant, the proposal is in accordance with the relevant policies of the Highland-wide Local Development Plan and the supplementary guidance for housing in the countryside. The existing buildings have been surveyed and are considered suitable for conversion. The proposed design and siting of the proposal is sympathetic to the landscape and will closely follow the original traditional buildings.

3.3 According to the applicant, the application has followed due policy and processes set out by Scottish Government planning guidelines and all surveys and investigations requested, have been completed. The applicant points out that it was a previously approved application and considers the current proposal to be a robust and sympathetic application. The applicant draws attention to the consultation responses of Historic Environment Scotland and National Trust for Scotland and that neither organisation objects to the proposal. The applicant also advises that they understand the sensitivity of the area within which the application site sits and that they understand the respect that it deserves which is why the conversion of the steading remains as close as possible to its original footprint.

3.4 The applicant agrees with the council's assessment, set out in the report to the South Planning Applications Committee of 17 September 2019, and I have outlined this assessment in the following chapter.

CHAPTER 4: THE CASE FOR THE COUNCIL

4.1 The application (ref: 18/04194/FUL) for: 'the conversion of steading to form house and erection of outbuildings (amended design to planning permission 15/02941/FUL)' was referred to the Highland Council's [South Planning Applications Committee](#) for consideration on 17 September 2019 due to there being five or more representations. The Area Planning Manager (South) recommended that the committee grant planning permission, subject to 6 conditions. The committee agreed to grant planning permission subject to the conditions recommended in the report together with an additional condition providing for the inclusion of a passing place on the access road.

4.2 According to the report to committee, the proposal is for amendments to a previously granted permission for the conversion of an existing, relatively intact, traditional steading building for residential use and the erection of associated outbuildings. The report to committee advises that the principle of the proposal is therefore established and the proposal is considered to comply with the redevelopment exception set out by Development Plan policy 35: 'Housing in the Countryside (Hinterland Areas)', and policies 28 and 29 in relation to Sustainable Design and Design Quality and Place-making. Its position within the Conservation Area and Inventory of Historic Battlefield area requires that added scrutiny and consideration is given to the proposal in order to ensure that it does not result in any negative impact to Culloden Battlefield or the ability to appreciate the important nearby features associated with the battle. It must also preserve or enhance the Conservation Area.

4.3 According to the committee report, the application has been thoroughly assessed by Historic Environment Scotland who conclude that the proposed development would not significantly change the character of this sensitive part of the battlefield landscape, and that it remains easy to appreciate the topography and the likely locations of important features. Historic Environment Scotland also note that because the proposal retains the steading, its footprint and form of the historic plot around it, it is unlikely to result in a significant change to the character of this part of the battlefield.

4.4 The report to committee considers that the proposal represents a sensitive approach to the redevelopment of a traditional building in an area of high cultural and historic significance. Due to its sympathetic design and use of high quality materials, the development will retain much of its historic character while bringing the traditional building back into active use, without impacting upon the ability to understand and appreciate Culloden Battlefield.

4.5 The proposal is not assessed as having any adverse impact on the character or appearance of the Culloden Muir Conservation Area. Therefore, it is considered that the proposal does meet the requirements of Section 64 of the Act in relation to both preserving and enhancing the character and appearance of the Culloden Muir Conservation Area. The report to committee concludes that, taking all relevant matters into account, the proposal accords with the principles and policies contained within the Development Plan and that it is acceptable in terms of all other material considerations.

4.6 The council, in its response to the Procedure Notice of 12 February 2020, reiterates that the report to committee of 17 September 2019 indicated that the previous application was extant when the new application was submitted. The council advises that it is accurate to state that the planning history of an application site is a material consideration in the assessment of future applications. According to the council, this is very recent planning

history for a very similar development to that which was previously granted; therefore, whether the previous application was extant or not, the existence of such a recent planning permission on the site is a material consideration in its determination. The council maintain that the facts were correctly set out in the committee report and members of the committee were able to fully appreciate the planning history of the site during the committee discussion and determination process.

CHAPTER 5: THE CASE FOR THE OTHER PARTIES

5.1 Representations by 25 parties (individuals and organisations) were made to the council prior to the consideration of the application at the South Planning Applications Committee on 17 September 2019. Those submitting representations included: Rocky Mountain Gaelic Culture Society; Paul Smart; Kit Spencer; Donald and Cerrisse Brundage; Fiona Crosswell; Lady Rachel Macdonald of Moidart and Clanranald; John Mcculloch; Dr David Learmonth; Phil Scott; Patricia Robertson; Suzanne Weston; Anne Lindsay; Pauline Jewett; Kelly Sisley; Stuart Naughton; Paul Bryant; Gillian Bell; the Historians' Council on Culloden (per Deborah Dennison); Carolyn Seggie; Lili Rehak; Lorraine Cullin; Andrew Ruickbie; Alison Freshwater; Thomas Stewart and Stephanie Taylor.

5.2 The objections raised in the representations relate to the following issues:

- Proposal is within the Culloden Battlefield Historic Battlefield boundary and within the Culloden Muir Conservation Area and development should not be allowed;
- Previous application has expired;
- Culloden Battlefield and its environs should be protected from further inappropriate encroachment onto this sacred site;
- Should be treated as a war grave;
- Site is a major tourist attraction and must be protected;
- Culchunaig farm is situated in the vicinity of the flanking movement of the British dragoons around the Jacobite right. A site that definitely saw action during the retreat and that is of archaeological and historical significance;
- Within the conservation area where there is a presumption against single house developments;
- Violates policies 10, 29 and 57 of the Culloden Muir Conservation Area and/ or Highland-wide local development plan respectively;
- Development neither enhances nor preserves the character of the conservation area;
- Will result in significant negative visual impact from all directions;
- Ancestors have a right to protect burial grounds and are claiming indigenous sovereignty rights;
- Historic lands must be saved – they will be important to our ancestors after we are gone;
- Research by Professor Christopher Duffy has confirmed that the proposed development would lie in the battlefield area;
- Proposed development is substantial and would strike an incongruous and discordant note;
- Light pollution and noise pollution;
- May in the future be included as a UNESCO World Heritage Site and as such its integrity and authenticity must be protected;
- Do not want Culloden to become another 'Bannockburn'; and
- Presence of natural heritage including nesting birds.

5.3 Two objections were submitted to DPEA in respect of the application following its call-in by the Scottish Ministers for determination. These objections were made by Dr David Learmonth, on behalf of the Group to Stop Development at Culloden (GSDC), and by Dr Christopher Duffy.

5.4 The Group to Stop Development at Culloden originally wrote to the Scottish Ministers on 27 September 2019 requesting that they call-in application (ref: 18/04194/FUL) for

determination. The [GSDC letter and accompanying annex](#) were subsequently submitted to DPEA by Dr Learmonth on behalf of GSDC on 7 January 2020.

5.5 In their letter, GSDC refer to the history of the application. According to GSDC, the application (ref: 18/0419/FUL) is a renewal application for a previous application (ref: 15/02941/FUL) at the same site. This application was approved on 2 October 2015. No development took place and therefore the original planning permission was about to expire at the end of the three year period. Application 18/04194/FUL was submitted to the Highland Council on 6 September 2018 with only minor alterations to design, layout and materials. According to GSDC, application 18/04194/FUL was only validated on 8 October 2018 as the applicant had to submit adjusted plans on request. This, according to GSDC, was beyond the three year period.

5.6 GSDC then refer to the report to the South Planning Applications Committee of 17 September 2019 which states “Full planning permission was granted in 2015 for the conversion of the steading into a house and erection of outbuildings. The 2015 application was extant when this application for renewal was submitted. The principle of development is therefore established and is a material consideration in the assessment of the application.” GSDC express concern that councillors on the committee were misled by the interpretation contained within the report to committee and therefore question whether councillors correctly and diligently followed due legal procedure in the determination of the application.

5.7 GSDC insist that planning permission was not extant when the application for renewal was validated, and that validation of the application must set precedent as the true date on which the subsequent application was made in terms of the planning regulations.

5.8 DPEA received a [representation from Dr Christopher Duffy](#) on 7 January 2020. Dr Duffy provided a paper on the action by Culchunaig Farm with a summary of the present understanding. According to Dr Duffy, Culchunaig Farm sits at the heart of one of the most significant but at the same time little understood episodes of the Battle of Culloden. Dr Duffy describes elements of the battle and events around the Culwhiniac Enclosure, a drystone wall construction, located north and east of the site. This included the breach of these enclosures by government forces, which then wheeled right to advance north to the rear of the highland army; the extent that the Jacobites defended their position here and the implications for the main field of battle; the flight by the main force of the Jacobite army from the centre of the battle and that the Jacobites had kept open the right wing’s path of retreat, therefore allowing the Jacobite right wing to break free and retire.

5.9 Dr Duffy’s submission includes a section devoted to the Culchunaig steading. Referring to various sources, Dr Duffy suggests that the ‘Culchunaig houses’ would have been on the site of the later Victorian farm buildings and therefore the steading, subject of this report. Dr Duffy refers to various sources (maps and sketches) which differ in particulars but have common features. According to Dr Duffy, without exception, the ‘Culchunaig houses’ were depicted as small, single-storey cottages with gable ends facing generally to the south.

5.10 Following the accompanied site inspection on 24 January 2020, a procedure notice was issued on 12 February 2020 to the applicant and the council asking for their comments on the various representations received in respect of the application. The responses from the applicant and the council are included in chapters 3 and 4 above.

5.11 Following the issue of the procedure notice, a further 22 [representations](#) were submitted to DPEA. These were from: Joyce MacKenzie, Fiona Gold, Marjie Thornton, Margaret Lang, Angel Dryland, John Robertson, Lorraine Cullin, George Kempik, Annette Webster, Carolyn Seggie, Bob Walker, Amy Quinn, Andrew Thornton, Dot Menzies Holden, Jeanette Newell, Katherine Duncan, Lili Rehak and William McKenna, Steve Innes, Douglas and Patricia Burns, Alistair Rose-Innes and Martha Innes (Innes Clan Society). Carolyn Seggie, Lili Rehak, and Lorraine Cullin had all previously submitted representations to the council prior to the council's consideration of the application at the South Planning Applications committee of 17 September 2019. All of these representations object to the proposal but do not contain any material to support their position. I did not therefore seek comments from the applicant or the council on these later representations. A full list of those who made representations is provided in Appendix 2 to this report.

CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

6.1 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. 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 the Planning Authority to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. As the site is located within the Culloden Muir Conservation Area, special regard is to be had to the preservation or enhancement of the conservation area.

6.2 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.

The development plan

Siting and design

6.3 The existing steading building is derelict and unused although I noted during the accompanied site inspection that it is largely complete with all the walls to wallhead level and the slate roof, on all three sections of this u-shaped building, is also largely intact.

6.4 The removal of the detached studio building from the eastern, more open part of the site and its incorporation within the main building ensures that the original building form is retained and that the proposed development is less prominent in the landscape. The proposed garden room, relocated from a relatively isolated location on the western side of the site to the north west of the steading, relates better to the proposed garage. The two proposed outbuildings are now 'tucked in' between the north west corner of the steading building and the northern site boundary, defined by a stone dyke, trees and scrub planting. Given their proposed position within the site, they are not prominent in the landscape.

6.5 The building is typical of traditional farm buildings which were built to one and a half or two storeys, primarily constructed from stone with natural slate for roofing. Therefore, the proposed use of some metal roofing and cladding on the one and a half storey main section of the building together with new openings and glazed panels (including sliding panels) introduces contemporary design elements to the building. These elements are combined with the traditional elements of the building including the natural stone walls which are to be retained and pointed with lime mortar throughout, with natural slate to be used on the two single storey elements of the building. Existing openings are proposed to be reused. Black/ dark grey timber cladding is also proposed. In light of the above and despite the introduction of contemporary design elements, the overall character of the building is retained.

6.6 The proposed garage (with turfed roof), garden room and greenhouse are proposed to be finished in the same black/ dark grey stained timber lining as is proposed to be utilised within the house. The form of these proposed outbuildings is not incongruous with the steading building and in addition to the observations above about their proposed location within the site, the use of turf and dark, recessive colours and materials would ensure that these buildings would not be highly visible in the landscape.

6.7 Given that the proposal involves the conversion of a traditional building which is currently derelict and unused, I consider that this provides the policy exception to the presumption against housing in the countryside (Hinterland areas). I consider that retaining the original building form, the siting of the proposed outbuildings within the site, the proposed use of materials and design features, that overall, the proposal respects local character whilst creating a quality living and working environment. I therefore consider that the proposal accords with Policies 35, 28 and 29 of the Highland-wide local development plan.

6.8 I am also satisfied that the proposal accords with the Housing in the countryside and siting and design supplementary guidance in respect of the conversion and rehabilitation of a traditional building, given that the building is substantially complete, including walls to wall head level; that the building is of a scale that is commensurate with a habitable building without recourse to substantial alterations and the character of the building is not significantly altered to an unacceptable degree. Similarly, I am satisfied that the proposal accords with Sustainable design supplementary guidance which welcomes innovative approaches to design and the use of sustainable materials, providing the outcome is sympathetic to the setting of the particular development.

6.9 I note that the council transport planning team raised no objections to the proposal in relation to site access or parking arrangements and I consider that the proposal accords with the council's non-statutory guidance on Access to single houses and small housing developments.

Historic environment and archaeological significance

6.10 The site is clearly in an area of high historical significance, given its inclusion within the battlefields inventory boundary for the Battle of Culloden (BTL6) and the Culloden Muir Conservation Area. Historic Environment Scotland advise 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.

6.11 According to Historic Environment Scotland, the farmstead, known as Culchuinach, comprised a group of buildings as shown on the first edition Ordnance Survey map surveyed in the late 1860s. The second edition Ordnance Survey map surveyed in 1903 suggests that the group of buildings were replaced by the existing steading and a then new dwelling to the northeast, now referred to as 'Culchunaig.' Since then there has been a further development of a single house on the northern side of the access track, opposite the 'Culchunaig' property. This is a modern bungalow set in extensive garden ground and is referred to as 'Corranach.'

6.12 The steading, subject of this report, was clearly not in existence when the Battle of Culloden took place and is thought to have been built on the site of the earlier farmstead. This is considered to be most likely given that remains of walls/ foundations have been identified below ground as part of the archaeological surveying of the area. I noted, during the accompanied site inspection, a trial trench to the west side of the main building which had enabled archaeologists to identify foundations of a previous structure.

6.13 The proposal reuses the existing steading (retaining its footprint and much of its form) and retains the form of the historic plot around it. Whilst the proposed outbuildings would result in some change on the site, given their scale, position within the site, design

and use of materials, I am satisfied that, overall, the proposal would not significantly alter the character of this part of the battlefield. Views of the steading would not be significantly altered and as a result, the proposal would not disrupt one's ability to appreciate the landscape of this part of the battlefield or the locations of important features to the battle such as the Culwhiniac enclosure. In this context, it is also important to note that the landscape surrounding the site has evolved over the centuries, altered by human activity including the introduction of commercial plantation woodland, roads, farm houses and associated agricultural buildings, boundary fences and overhead transmission lines.

6.14 I am reassured in reaching these conclusions, given my observations during my inspection of the site and surrounding area. Whilst I was able to obtain glimpsed views of the property referred to as 'Corranach' from within the National Trust for Scotland owned section of the Culloden Battlefield, I was unable to obtain any view of the application site or steading building from this land (including from the southernmost point of the NTS owned land). This was largely due to the fact that the site is located south west of and behind the property referred to as 'Corranach' and also 'Culchunaig' and also due to the topography and the presence of mature trees and associated vegetation which also screen the site from view from the north and north east. I was also unable to obtain any proper view of the steading building from the nearest road to the south and east (B851).

6.15 I note that at the request of the council (Historic Environment Team – Archaeology), an archaeological survey was carried out in 2019. This required recording of the steading and archaeological investigations to ascertain the presence or absence of remains, features or deposits associated with the battle and/ or earlier prehistoric activity. I note that only 50% of the metal detecting survey was completed across the site due to ground conditions. Whilst this trial trenching failed to identify anything of note or relating to the Battle of Culloden and the conclusion drawn was that the potential for features associated with the battle to be unearthed was low, it cannot be ruled out that features contemporary with the battle survive on the site, given its location. Historic Environment Scotland also highlighted the archaeological potential of the site, given its location. Whilst the evidence thus far is that the site is not archaeological rich in respect of the battle, at the same time it cannot be ruled out that there are features contemporary with the battle. Should planning permission be granted for the application, it would therefore be prudent to complete the survey work referred to above which could be required by condition. Such works would include building recording, metal detecting and a watching brief during site clearance. As highlighted by NTS, further archaeological investigation may reveal further discoveries which may alter and add to our understanding of the Muir and the battle.

6.16 Archaeological interest pre-dates and post-dates the Battle of Culloden. I am aware that there are scheduled ancient monuments, approximately 300 metres south east of Culchunaig. However, due to the separation distance and the lack of intervisibility between the scheduled sites and the application site, I am satisfied that there would be no direct or indirect impact on these sites as a result of the proposal. I also note that there are no listed buildings within close proximity to the proposal that would be directly or indirectly affected by the proposal. Given my comments above, I am satisfied that the proposal would not have a significant adverse impact on the Culloden Battlefield. I am also satisfied, given my observations on site and in the surrounding area and given the various activities/ uses in the area, that the proposal would not have a significant impact on the character or appearance of the Culloden Muir conservation area which I return to later in the report.

6.17 In accordance with policy 57: 'Natural, built and cultural heritage', I consider that the proposal would not have an unacceptable impact on the conservation area nor would it

compromise the battlefield heritage resource. I therefore consider that it accords with policy 57. In accordance with the Highland Historic Environment Strategy Supplementary Guidance, I consider that the applicant has taken account of the historic environment as part of the design evolution of the proposal and the proposal has been subject to detailed scrutiny as part of the development management process.

Infrastructure

6.18 The site is not in an area susceptible to flooding and I note that the council's Flood Risk Management Team have no objections to the proposal. Whilst the proposal is not able to connect, to the public sewer network, private sewage treatment options are available (without causing significant environmental or health problems). Waste water is proposed to be treated by provision of a septic tank and surface water discharge is proposed to be dealt with via a soakaway system, both in accordance with Scottish Water and council building regulations guidance. The precise location of the drainage system would need to be subject to a condition for prior approval by the planning authority, in the event that permission is granted for the proposal, in order to account for any archaeological survey work that must first be carried out. I noted during the accompanied site inspection, the size of the site relative to the existing building footprint. I am therefore satisfied that, even with the proposed outbuildings being accommodated on the site, there is sufficient space to accommodate an appropriate drainage solution.

6.19 In light of the above, I consider that the proposal accords with policies 64, 65 and 66 of the Highland-wide local development plan and supplementary guidance on flood risk and drainage impact assessment. The proposal is not affected by any constraints identified in the Physical constraints supplementary guidance and therefore I consider that it accords with policy 30: 'Physical constraints' of the local development plan.

Protected species

6.20 A bat survey of the steading building and its environs was completed in 2019. This identified the presence of one non-maternity roost (common pipistrelle) within the building. There would be some impacts on this bat roost, as a result of the proposed development. Given that all UK bat species are protected by law, making it an offence to damage, destroy or disturb a breeding site or resting place of any such animal, a licence from Scottish Natural Heritage would be required before development could take place. In addition to the bat survey, the applicant commissioned a Species Protection Plan which identified a number of mitigation measures including the placement of a rescue bat box; working methods that would limit disturbance to roosting bats; and supervision of some works by a suitably licensed bat ecologist. The Species Protection Plan also identified compensatory measures, required in order to safeguard the site for use by bats in the longer-term, including the retention of the rescue bat box in perpetuity, following development works and a lighting plan, designed to minimise impacts on bat emergence/ re-entry and foraging behaviour in the vicinity of the structure.

6.21 A barn owl roosting site and potential nesting site have also been identified in the steading building and the Species Protection Plan also provides information on timing constraints and working methods in respect of this species.

6.22 In light of the survey work that has been carried out and based on the mitigation measures identified in the Species Protection Plan, I am satisfied that the impact of the proposal upon protected species is minimised. I therefore consider that, subject to a

condition requiring the implementation of the measures identified in the Species Protection Plan, the proposal accords with policy 58: 'Protected species' and the Highlands Statutorily protected species supplementary guidance.

6.23 I note that the report to committee (17 September 2019) advised that as the application was submitted before the adoption of the council's updated Developer Contributions supplementary guidance, a contribution towards education provision was not required. Given the scale and nature of the development and the conclusion provided in the report to committee by the Area Planning Manager – South of Highland Council, I am satisfied that no developer contributions are required in order to make this proposal work or to address any adverse impact of this proposal on services or infrastructure. I am reassured in reaching this conclusion, given that no developer contributions were sought in respect of the original application granted planning permission by the council with no requirement for developer contributions. I therefore conclude that the proposal is not in conflict with policy 31: 'Developer contributions' or the associated Developer contributions supplementary guidance.

6.24 In light of the above, I consider that the proposal accords with the development plan.

Other considerations

Planning history of the site

6.25 Planning permission was granted on 2 October 2015 (reference: 15/02941/FUL) for the conversion of the existing steading to form a dwelling, and erection of outbuildings. This proposal was not considered, by the council, to significantly impact on the surrounding landscape characteristics or on the specific qualities of the battlefield as the degree of change from the conversion of the existing steading and associated development to the scale of the battlefield was considered to be minor. In light of this, the council was satisfied that the proposed development would not significantly change the key landscape characteristics of the battlefield or have a significant effect on the understanding and appreciation of the battlefield. The council was also satisfied that the proposal took account of the architectural interest of the building. The proposed exterior walls were to be finished in a mix of natural stone, off white render and vertical larch lining. Whilst natural stone was to be repointed with lime mortar and natural slate used for the roof, the council was accepting of the use of further glazing throughout the building which it considered provided a distinct contrast whilst complimenting the old and new design.

6.26 The proposal is an amended design of the previous planning application (Ref:15/02941/FUL), granted consent by the Highland Council. The amendments to the design and layout include the removal of the detached studio building which is now included within the main building; the relocation of the garden room from the west side of the steading to an area north west of the steading; and amendments to window placement and design detailing. I therefore consider that the current proposal is very similar to that previously granted consent.

6.27 Much has been made of the timescales for the submission of this latest application, given that the 2015 consent included an informative requiring the development to commence within three years of the date of the planning permission, otherwise that permission would lapse. No commencement of development on the site has taken place. The council confirm that the previous permission was extant when the most recent application (ref: 18/04194/FUL) was submitted (6 September 2018) albeit, the application

was not formally validated until 8 October 2018 (the reason being that the applicant was required to make adjustments to certain plans and to resubmit these to the council). In light of this, the application, as validated, is technically outwith the three year period but only by a matter of days. The planning context had not changed in that period of time. In fact, the development plan context has remained unchanged since the first application was approved by the council in 2015.

6.28 I consider that the recent planning history for the site, for very similar proposals, is material to the consideration of the current proposal and, given the development plan position has remained unchanged since the 2015 consent, is something that should weigh in favour of the current proposals.

Culloden Muir Conservation Area

6.29 As referred to above, the site is located within the boundary of the Culloden Muir Conservation Area. The conservation area was extended in 2015 and a Character Appraisal and Management Plan prepared and approved, also in 2015. Planning control is directed at maintaining the integrity of the entire area and preserving and enhancing its special character. Conservation Area status does not mean that new development is unacceptable, but care must be taken to ensure that new development will not adversely impact on the character or appearance of the area.

6.30 Culloden Muir is representative of the interactions between humans and the landscape over thousands of years. Culloden Muir is defined by the remains of the prehistoric activity in the Nairn valley at Clava, the Battle of Culloden fought on the plateau of the Muir in 1746 and the development of the railway and larger farmsteads of the Victorian period. According to the conservation area character appraisal, traditional cottages and dwellings were built to one and a half or two storeys and natural slate was the most prevalent roofing material. The larger farmsteads include some larger houses and associated barns, byres, steadings and stables all again primarily constructed of stone with slate roofs.

6.31 I am required to have special regard to the preservation or enhancement of Culloden Muir Conservation Area. For the reasons outlined in above, I consider that the proposal would not harm the character or appearance of this conservation area and hence would preserve its character and appearance. I therefore consider that the proposal meets the requirements of section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in respect of both preserving and enhancing the character and appearance of the Culloden Muir Conservation Area.

National policy and advice

6.32 With regards to Battlefields, Scottish Planning Policy (SPP) (2014) states (Paragraph 149) that "Planning authorities should seek to protect, conserve and, where appropriate, enhance the key landscape characteristics and special qualities of sites in the Inventory of Historic Battlefields."

6.33 The Historic Environment Policy for Scotland (HEPS) 2019 advises that "Changes to specific assets and their context should be managed in a way that protects the historic environment."

6.34 Managing Change in the Historic Environment: Historic Battlefields guidance advises (page 12) that: “Including a battlefield in the Inventory is not intended to be simply a barrier to development. The intention is to identify an area of added protection where particular consideration must be given to impacts on the site. This should focus on the special qualities and landscape characteristics of the battlefield. Planning authorities have to consider proposals carefully and determine whether development will significantly detract from the importance of the battle site.”

6.35 Whilst the site is located within the Inventory of Historic Battlefields and within a conservation area, this does not mean that no development can take place in such a location. It simply means that there is a greater level of scrutiny afforded to any development proposal so that it does not cause unnecessary damage or affect the integrity of the historic battlefield or cause harm to the character and appearance of the conservation area. For the reasons set out earlier in this section, I am satisfied that the proposal does not conflict with the national policy and guidance, designed to protect such cultural assets.

Consultation responses

6.36 According to Historic Environment Scotland (HES), the proposed development would not significantly change the character of this sensitive part of the battlefield landscape. HES acknowledge that it may result in more localised impacts and directly impact upon physical remains associated with the battle. However, HES also acknowledge that mitigation, to avoid or reduce impacts, is likely to be possible. The National Trust for Scotland, acknowledging the national importance of the battlefield site, appreciate the dilapidated nature of the existing building and accept that the proposal may be appropriate subject to appropriate heritage assessments and to appropriate scale and design. Given my observations above, I am satisfied that the proposal, subject to appropriate conditions, addresses the matters raised by NTS.

6.37 I am reassured by the statutory consultation responses, particularly as there are no objections from any statutory consultees. I am particularly reassured given that neither Historic Environment Scotland or the National Trust for Scotland (NTS) object to this application and that neither body objected to application 15/02941/FUL.

Representations by third parties

6.38 I am conscious that all the representations that have been made, with the exception of one neutral representation, object to the proposal. A sizeable majority of representations are simply against the principle of any development within the Inventory battlefield site boundary and the Culloden Muir Conservation Area boundary. However, as referenced in Chapter 2 above, whilst there is a level of policy protection specifically given to areas covered by these designations, this does not mean that policy completely excludes any form of development from taking place in such areas. This notwithstanding my observations and conclusions, as outlined above, that the proposal, given its siting and design, extent and position would have a relatively minor impact, physically and visually, on the area. Whilst several representations have raised specific concerns, as highlighted in paragraph 5.2 of this report, these are addressed under the various headings in this chapter.

6.39 Representations by Dr Duffy provide a particular level of detail in respect of the battle site and the ‘Culchunaig houses’, which would have been in existence at the time of the battle but which no longer exist as physical structures above ground level. Whilst Dr Duffy

provides details from various sources, these do not add significantly more to the appreciation of the battle site than already exists or to its importance given its existing status. Historic Environment Scotland confirm 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. Despite this knowledge, HES do not object to the proposal.

6.40 The Inventory of Historic Battlefields, in acknowledging the battle's importance, comments that this has resulted in many detailed contemporary records and maps and has stimulated considerable subsequent research and archaeological investigation, making it the best understood battlefield in Scotland. This is not to say that we no longer require to research this site. On the contrary, I have suggested a particular condition, should this application be granted approval and the investigations/ work that would be required as part of that suggested condition would provide a further opportunity to extend our knowledge and appreciation of the archaeology of a part of the wider battlefield site.

Suggested conditions

6.41 I have had regard to the conditions attached to planning permission 15/02941/FUL and to the conditions proposed in the report to committee of 17 September 2019 as well as the additional condition requested by the council, following the committee, for the inclusion of a passing place on the access track. I attach, at Appendix 1, a set of suggested conditions based on those proposed by the council in the report to committee of 17 September 2019 with some deletions and additions. I have included in Appendix 1, all the proposed conditions from the report to committee, with the exception of proposed condition 3. I am satisfied that there is sufficient space within the site to accommodate adequate off street parking/ turning and that condition 3, proposed by the council, is not necessary in order to enable the development to proceed.

6.42 Given the nature of the proposal and the likely number of vehicles that could be expected to access the proposed dwelling on a regular basis, I consider that a passing place on the access track to the site is not necessary in order for the proposal to be able to proceed. I have therefore not included a condition in relation to this matter. I have suggest two additional conditions. Proposed condition 1 is suggested in order that the development is implemented in accordance with approved plans. Proposed condition 2 requires the implementation of mitigation measures identified in the Species Protection Plan (26 August 2019). I consider that the conditions contained in Appendix 1 are necessary in order to make the development acceptable and that they comply with the tests set out in Circular 4/1998.

Recommendation

6.43 For the above reasons, I recommend that planning permission is granted, subject to the 7 conditions contained in Appendix 1 to this report.

Andrew Fleming
Reporter

APPENDIX 1: SUGGESTED CONDITIONS

1. The development shall be implemented in accordance with the following drawing numbers:

2015-26-MRH-103 rev A: Location Plan

2015-26-MRH-203 rev A: Site Plan

2015-26-MRH-101: Existing Elevations

2015-26-MRH-201: Proposed Elevations

2015-26-MRH-102: Existing Floor Plan

2015-26-MRH-202: Proposed Floor Plan

2015-26-MRH-207: Sectional Elevations

2015-26-MRH-204: Garden Room Plan

2015-26-MRH-205: Garage Plan

2015-26-MRH-206: Greenhouse Plan

or as otherwise agreed in writing with the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved details.

2. Prior to the commencement of development, mitigation and compensatory measures shall be agreed in writing with the Planning Authority based on the measures identified in the Species Protection Plan (26 August 2019).

Reason: In the interests of reducing risks to bats and birds.

3. The house hereby approved shall not be occupied until the vehicular access into the site from the private access track has been constructed in accordance with the approved drawings and the Council's Access to Single Houses and Small Housing Development supplementary guidance.

Reason: In the interests of road safety.

4. No development shall commence until full details of all foul and surface water drainage have been submitted to and approved in writing by the Planning Authority. Thereafter all drainage infrastructure shall be installed in accordance with the approved details prior to the first occupation of the house. For the avoidance of doubt, this shall accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Fourth Edition (or any superseding guidance prevailing at the time).

Reason: To ensure that the site is adequately drained and in the interests of public health.

5. No development or work (including site clearance) shall commence until a programme of work for the evaluation, preservation and recording of any archaeological and historic features affected by the proposed development/ work, including a timetable for investigation, has been submitted to, and approved in writing by, the Planning Authority. The approved programme shall be implemented in accordance with the agreed timetable for investigation.

Reason: In order to complete the archaeological survey work and protect the archaeological and historic interest of the site.

6. No development shall commence until a scheme for the storage and collection of refuse and recycling within the application site has been submitted to and approved in writing by the Planning Authority. The approved scheme shall be implemented prior to the first occupation of the house and thereafter maintained in perpetuity.

Reason: In the interests of road safety.

7. The outbuildings hereby approved shall be used for purposes incidental to the residential use of the site and shall not be used for separate residential accommodation.

Reason: In the interest of residential amenity.

APPENDIX 2: LIST OF THOSE MAKING REPRESENTATIONS

Representations submitted to the council prior to the consideration of the application at the South Planning Applications Committee on 17 September 2019.

Rocky Mountain Gaelic Culture Society
Paul Smart
Kit Spencer
Donald and Cerrisse Brundage
Fiona Crosswell
Lady Rachel Macdonald of Moidart and Clanranald
John Mcculloch
Dr David Learmonth
Phil Scott
Patricia Robertson
Suzanne Weston
Anne Lindsay
Pauline Jewett
Kelly Sisley
Stuart Naughton
Paul Bryant
Gillian Bell
The Historians' Council on Culloden (per Deborah Dennison)
Carolyn Seggie *
Lili Rehak *
Lorraine Cullin *
Andrew Ruickbie
Alison Freshwater
Thomas Stewart
Stephanie Taylor

Representations submitted to the DPEA

The Group to Stop Development at Culloden (per Dr David Learmonth)
Dr Christopher Duffy
Joyce MacKenzie
Fiona Gold
Marjie Thornton
Margaret Lang
Angel Dryland
John Robertson
George Kempik
Annette Webster
Bob Walker
Amy Quinn
Andrew Thornton
Dot Menzies Holden
Jeanette Newell
Katherine Duncan
William McKenna
Steve Innes

Douglas and Patricia Burns
Alistair Rose-Innes
Martha Innes (Innes Clan Society)

*also submitted representations to the DPEA