



SCOTTISH EXECUTIVE

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Your ref: 264/62
Our ref: P/PPA/240/143

2 November 2004

Dear Sirs

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4

PLANNING APPEAL BY GRANGE ESTATE: MIXED USE DEVELOPMENT COMPRISING RESIDENTIAL, BUSINESS, HOTEL, LEISURE FACILITIES AND ANCILLARY WORKS AT DRUM FARM, BO'NESS

1. I refer to your clients' appeal, which I have been appointed to determine, against the refusal of outline planning permission by Falkirk Council for the mixed use development comprising residential, business, hotel, leisure facilities and ancillary works at Drum Farm, Bo'ness. I have considered the written submissions and made an accompanied inspection of the appeal site and the surrounding area on 19 August 2004.

2. The appeal site comprises two parcels of land, one to the north (North Drum) and one to the south (South Drum) of the Drum Farm housing estate, which is under construction on the eastern edge of Bo'ness. The North Drum is some 11ha in extent. It comprises an agricultural steading and pasture. The land slopes to the north giving extensive views over the Forth Estuary. South Drum is some 13ha in extent and comprises agricultural fields. It is relatively level and is backed by low hills to the south. Grahamsdyke Rd (A993), the main road into Bo'ness from the east, divides the Drum estate from South Drum.

3. You have made an application for the award of expenses against Falkirk Council. That is to be the subject of a separate letter.

4. A masterplan, approved by Falkirk Council in 1999, was prepared for an area covered by the Drum estate, as described in paragraph 2 above, together with some adjacent land, mostly to the east and north of those areas. It included the broad outlines of a layout. For South Drum it showed a business park, road access point, reedbed/filtration pond, and a small residential enclave in the north

west corner (known as Miller Pit Head). For North Drum it showed mostly residential development with a community space.

5. The application for planning permission includes a notional layout for the residential and business park uses, which is more detailed than that contained in the masterplan. The residential layout at North Drum shows a similar style of layout to that under construction and built at Drum Farm. A parkland corridor continues an existing link from the site of the Roman camp through to Kinnigars Park to the north. A cafeteria or shop is shown in a central position. The business park at South Drum shows units of different sizes in three rows parallel with Grahamsdyke Rd. Access is off the existing roundabout on Grahamsdyke Rd. A restaurant/hotel is indicated in the north east corner, a small area of residential development and community use building at the Miller Pit Head site, next to established housing, and an attenuation waterway or loch on the main road frontage.

6. Planning permission was refused because it is considered that the business element of the application is premature in relation to the assessment of the scale and location of industrial land through the Falkirk Council Local Plan (CDFCLP) which is currently being prepared.

7. In response to consultation, **Scottish Natural Heritage** (SNH) object to the proposals as currently formulated. Development to the south of Grahamsdyke Rd would be contrary to the Greenbelt and Area of Great Landscape Value (AGLV) policies of the council. Grahamsdyke Rd forms a readily identifiable boundary between town and countryside. If that part of the development were deleted, SNH would remove its objection. A planning agreement for any permission should provide for: a management regime for the woodland to the north of the site; retention of existing trees on the site; and new woodland planting.

8. The **Scottish Environment Protection Agency** (SEPA) has no objection, subject to conditions relating to a SUDS strategy, culverting, foul drainage, waste recycling, landscape and construction works. **Scottish Water** advise that an extension to the existing main water network would be required. The existing sewer network downstream of the site may need to be upgraded at the developer's expense. The **Coal Authority** advise of former coal workings in five seams from shallow to 130m depth and 39 mine entries within or near the site. **British Airports Authority** (BAA) require a height restriction on development. Other consultees raise matters which are not at issue.

9. **Bo'ness Community Council** objects to residential development at Miller Pit Head as contrary to the development plan. There are numerous potential residential development sites within the built up area which should have preference. It has no objection to the other aspects of the proposals.

10. Of the **letters of objection** received, 132 being of similar format and content and 31 being individual letters, including from the SNP Bo'ness Branch. The points they raise are:

- The Falkirk Council Structure Plan (FCSP) removed the site from the schedule of business sites in Bo'ness
- Existing business/brownfield sites should be regenerated and developed
- There is no current need for the hotel/restaurant
- The community use building should be located to the north of Grahamsdyke Rd
- There is no local housing need to justify housing in the countryside or Greenbelt
- The proposals are contrary to the FCSP and Consultative Draft Falkirk Council Local Plan (CDFCLP)

- The attractive approach to Bo'ness would be destroyed
- The proposals would be incompatible with the character of Muirhouses village
- It would detract from the rural outlook of existing residents at the Drum
- There would be noise nuisance and traffic pollution for existing residents
- Increased vehicular traffic would harm road safety
- There are adequate business sites in Bo'ness already
- The need for the business site no longer exists
- The residential, hotel and leisure elements of South Drum are contrary to the business zoning
- The existing pigeon lofts on part of the site should be retained
- Crop bearing land should not be used for development
- A leisure facility already exists nearby
- Affordable housing would be more appreciated
- The capacity of schools is questioned
- There are no local shops in the area and transport links for the non-car user are poor
- The shop/cafeteria would harm the amenity of neighbouring residents
- A precedent would be set for yet more housing
- Mature trees at North Drum should be retained
- Lack of demand for business uses may prompt applications for alternative uses, such as a school or housing, at South Drum.

11. There was a further letter of objection from the convener of the Regulatory Committee of the council which refused the planning application. He states that it would be wrong to allow an individual planning application to pre-empt the processes of the emerging local plan. The FCSP deleted South Drum as a business site in recognition that there was no realistic possibility of business development at the location. It also recommends that South Drum be returned to Greenbelt status. The Bo'ness Local Plan (BLP) is outdated. The application conflicts with the DCFCLP, which itself conforms to the FCSP. During the FCSP consultation, Grange Estates argued that South Drum was unsuitable for business park use and should be reallocated for housing. The DCFCLP has concluded that there is no justification for such a reallocation. It is feared that South Drum could be the subject of a future housing application on the basis that business development is unachievable. That would be difficult to resist if the land is allowed to remain within the Urban Limit. Such a situation would not be in keeping with best planning practices.

12. Recent events have also overtaken the acceptability of the North Drum housing proposals. The council has agreed an exciting new masterplan for the disused harbour and foreshore at Bo'ness (known as Bo'ness Foreshore) to include waterfront housing, which would take the housing land supply considerably beyond the requirement in the development plan. This forms part of the review of the structure plan. It would be inappropriate for the approval of an individual application to pre-empt the outcome of the democratic planning process.

13. There were 39 **letters of support, including** from the local MP and MSP, which maintain that the business park would: assist the future prosperity of Bo'ness; provide local jobs; provide a restaurant or hotel for the benefit of local people and visitors; be far enough from Muirhouses as to have little impact; utilise the strategic location of Bo'ness near the motorway. The residential development would be an excellent addition to housing options in Bo'ness, and would extend the environmental benefits of the existing residential development at the Drum.

SUMMARY OF CASES

14. For your clients you state that policy EPR4 of the structure plan known as Central 2000 (approved in 1992) led to the identification of a strategic business park in Bo'ness. The Bo'ness Local Plan (adopted 1995) allocated the land which includes the appeal site for housing and business uses. The local authority then issued a development brief providing planning guidelines and specific requirements, including planning gain. Following that, your clients produced a masterplan, which was approved by the council in 1999. Subsequent modifications to the masterplan, although not formally approved by the council, were used as the basis for future determinations on planning applications. The committee report confirms that the masterplan remains the prime reference point in assessing applications for development at Drum Farm. It should therefore be treated as a major material consideration. The reporter in a recent appeal on another part of the site (reference P/PPA/240/129), confirmed that the masterplan was material in his determination.

15. In the first review of the Bo'ness Local Plan, the council argued that land at Drum Farm was required to be allocated for residential and business uses in excess of that which would meet the needs of the plan period. That over-allocation was justified as enabling an overall package, including planning gain, to be achieved. Thus the council has never intended that all of the land at Drum Farm should be developed within the plan period. Your clients have therefore adopted a phased approach to the overall development. In reliance on that approach, they have invested significant sums in high quality urban design and architecture and the necessary infrastructure for later phases, including the business park. These planning gains are dependant on the realisation of all of the developments making up the masterplan.

16. Central 2000 stated that not all of its allocations were likely to be developed by 2001, and that a portfolio of marketable sites was to be created. The business park proposals were to be directed to prominent edge of settlement locations with good access. Hence the proposals in Bo'ness. Such a prestigious development would enhance the image of Bo'ness as a location for investment. Although the structure plan expressed a preference for a foreshore location for the business park, the local plan, having evaluated alternatives including the foreshore, identified the part of Drum Farm south of Grahamsdyke Rd for that use. The local plan confirmed the masterplan area as an urban location and appropriate adjustments were made to the Greenbelt.

17. Your clients' strategy has been for the earlier residential phases to provide the basic infrastructure, thereby allowing the final phases of residential and business use to be take place. The juxtaposition of housing and employment provides a sustainable development. Earlier phases have now been granted by the council. These have been used as a case study in PAN67: Housing Quality. The development has also been issued with a Commendation in the Scottish Awards for Quality in Planning. The citation referred to the masterplan as the foundation for success.

18. The Consultative Draft Falkirk Council Local Plan was issued for comments to be received by late 2003. The council does not expect adoption before 2007. It should therefore be accorded limited weight.

19. Although a review of strategic employment sites in the FCSP resulted in the rejection of Drum Farm, that conclusion is considered to be equivocal because the relevant appendix lists a "don't know" under marketability (one of the three tests). It cannot therefore have led to the conclusion reached by the council that the Drum site had been de-zoned. The site has simply been demoted from its strategic status. There is nothing in the plan to preclude continued allocation of the appeal site for development. Indeed, policy ECON3 of the structure plan requires local plans to

make allocations to provide for local needs. Accordingly, the CDFCLP expresses an intention "to consider the future of the Drum business site, which is no longer identified as being of strategic importance in the structure plan." However, the draft plan's consideration of the future of the site is at an early stage, so this factor should be accorded limited weight.

20. The FCSP states that the current Greenbelt boundary, as identified in the BLP, should be maintained. By seeking to move the Greenbelt boundary, the draft local plan presumes to alter the structure plan rather than conforming to it. That is contrary to section 17(3) of the Act. There is therefore no conflict between the statutory development plan and the appeal proposals. It is noted that in its response to the appeal questionnaire, the council confirms that the proposals do not constitute a significant departure from the FCSP or a departure from the BLP.

21. Whilst the strategic status of the business site has been removed, nevertheless the infrastructure is now in place and the phased development should be allowed to proceed as indicated in the adopted local plan and the masterplan. Your clients consider this to be the appropriate time to seek permission for the mixed uses which comprise the later phases of the scheme.

22. In order to be premature, the proposals would have to be at odds with the development plan, which these are not. Nor do they seek to introduce elements that have not been included or considered in formulation of that plan. The appeal proposals are in line with the appellants' programme. Moreover, contrary to the assertion in the committee report, there is a developer interest in the mixed use in the shape of Mactaggart and Mickel, who developed the first phase and have also been involved with the masterplanning and infrastructure provision.

23. Any concerns expressed by consultees can be addressed by the imposition of suitable conditions. Discussions with the local authority indicate that they would prefer funds used to provide the proposed community use building to be used as a contribution towards refurbishment of the Hippodrome in Bo'ness. A suspensive condition to allow for a commuted sum to be paid by the appellants in lieu of a community facility on the site would be acceptable to your clients.

24. In response to letters of objection, you state that the masterplan was approved under a different administration of the council. The present appeal has been necessitated by a political dispute, as confirmed by correspondence from a former councillor. Some of the objections to the scheme are motivated by a desire to promote development of the Bo'ness Foreshore area. That scheme is still at feasibility study stage and no planning application has been submitted to date. It would involve an alteration to the structure plan. It should therefore not be regarded as a material consideration in this appeal.

25. The BLP is used by the council as the basis for day to day determination of planning applications. If the convener thinks that plan is outdated, that should be the basis for determination of all planning applications, and not just this one. He refers to correspondence submitted on behalf of Grange Estates in 2000. That simply responded to the proposed downgrading of the business park in the then draft structure plan by indicating that if the planning authority wished to remove the business park status of the land then residential use would be the most appropriate alternative.

26. **On behalf of the council**, it is stated that the housing element of the scheme accords with the provisions of the development plan and is generally satisfactory. In isolation, it might be acceptable.

27. With regard to the FCSP, policy ECON1 (Strategic Development Opportunities) does not list Drum Farm among the strategic opportunities. Hence it does not support the business element of the

proposals. Policy ECON3 (Local Business Development Opportunities) allows for local sites to be identified through local plans. The local plan which identifies Drum Farm is currently under review. The provision of a hotel/restaurant could be considered to conflict with policy ECON7 (Tourism) in diverting investment from Bo'ness centre. Whilst such uses might be appropriate in connection with strategic business parks, there is no longer to be a strategic type of site at Bo'ness. The whole site lies within the urban area as defined in the BLP, so there is no conflict with policy ENV1 (Countryside and Protected Areas). Schedule ENV1 and the Key Diagram identify general locations for Greenbelt designation, including between Bo'ness and Linlithgow, but the current Greenbelt boundary is identified in the BLP and does not affect the appeal site.

28. In the BLP, North Drum is identified as Housing Proposal H14 and South Drum (other than the Miller Pit Head site) as Business Proposal BUS1 (Prestige Business Park). Policy BNS13 states that the site should be for development within Use Class 4 (Business). The proposals therefore accord with the development plan, although there is no longer a strategic need for a business park in Bo'ness. However, the BLP was drawn up to conform to the Central 2000 structure plan, which has now been superseded. Therefore, it is not up-to-date.

29. The CDFCLP is at an early stage in its preparation and therefore of limited weight. The housing component of the proposals broadly accords with the provisions of the plan. However, there is no allocation for a business park at Drum Farm. The land is shown as outwith the Urban Limit and within the Greenbelt and the AGLV. The reasons for those changes are: the removal of strategic status in the FCSP; lack of any developer interest in the site since its allocation in 1995; failure of the landowner to bring the site to market; and the very negative representations which Grange Estates made during the structure plan process about the prospects of the site. The site is not within an Assisted Area. In the CDFCLP consultation process, nine parties opposed the deletion and two parties supported it.

30. It is acknowledged that contributions have been made by the developer towards affordable housing, a new cemetery, landscaping and open space/play areas. However, these relate purely to the housing element of the proposals.

31. In view of the fundamental policy issues raised by the conflict between the proposals for South Drum and the proposals in the emerging local plan, it is considered that that element of the application is premature pending consideration of the Finalised Local Plan later this year.

32. It is accepted that were the principle of the development to be accepted, the detailed concerns could be addressed by conditions and/or the submission of additional supporting information regarding noise and/or traffic impact.

CONCLUSIONS

33. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan comprises the FCSP (approved 2002) and the BLP (adopted 1995). The masterplan for Drum Farm, the DCFCLP, the CDFCSP Alteration (published June 2004), and proposals for Bo'ness Foreshore have been put forward as material considerations in this appeal. I examine these and their materiality below. Accordingly, based on my inspection of the appeal site and the written submissions, I consider that the issues to be determined are whether the proposals are consistent with the relevant provisions of the development plan and whether an exception to these provisions is justified by other material considerations.

34. On the first issue, there is no dispute between the principal parties that the residential use on North Drum and the business park use on South Drum accord with the provisions of the BLP in that they are allocated for such uses. (A small corner of the appeal site on its northern edge lies outwith the local plan zoning, but this has not been contentious and I regard it as insignificant. A small site at Miller Pit Head also lies outwith the zoning, but it is discussed below in relation to more detailed matters and does not affect the principles discussed here) Similarly, it is not disputed that the housing element of the appeal proposals complies with the relevant policies of the CDFCLP. Whilst the FCSP does not list the South Drum site as a strategic development opportunity (as its predecessor, Central 2000, had done), it does allow for local business development opportunities to be identified through local plans. Moreover, it does not propose any change to the Urban Limit or Greenbelt boundaries in this locality. Thus the FCSP does not stand in the way of business park development at South Drum. There are issues over whether the hotel/restaurant use is appropriate as part of a (non-strategic) business park and the location of the proposed community building, both of which I discuss below. However, in broad terms, the proposals are consistent with the development plan. This is acknowledged in the committee report.

35. The BLP was adopted nine years ago, the normal timespan of a local plan being ten years. It was prepared to conform to a structure plan which has now been superseded, including in respect of the original requirement for a strategic business park at South Drum. Moreover, the council has recognised that new policies are needed by initiating its district-wide local plan. For these reasons, I place reduced, but still considerable, weight on the relevant provisions of the BLP. By contrast, the FCSP was approved only two years ago. Subsequently, the FCSP Consultative Draft Alteration was published in June 2004 with a consultation period between July and September 2004. The most relevant part of the document to this appeal is the proposed inclusion of Bo'ness Foreshore as a special initiative for residential regeneration. However, that document is at a very early stage in its progress to adoption and I am not persuaded that it affects the key issues for this appeal in any significant way. I therefore intend to place full weight on the provisions of the FCSP.

36. Turning to the second issue, in respect of the CDFCLP, the housing component of the appeal scheme broadly accords with those proposals in the plan relating to housing, a park and a community facility/shop at North Drum. However, the business park use at South Drum is deleted from the plan. The land is excluded from the Urban Limit, and included as Greenbelt and AGLV. Policies EQ20 and EQ23 relate to those designations. As the position stands now, the proposed changes to the Greenbelt do not conform to the FCSP. Whilst the council has expressed an intention to seek a review of the structure plan in that respect, among others, I can place very little weight on such a proposal because of that lack of conformity. By contrast, the other changes indicated for South Drum are not out of conformity with the FCSP. Nonetheless, they were the subject of a significant number of representations in the consultation process on the emerging plan, many of which opposed the changes. In view of the relatively early stage the CDFCLP has reached in its progress towards adoption, and the contentiousness of its proposals for South Drum, I can place only limited weight on the relevant aspects of that plan.

37. The proposals are broadly consistent with the masterplan for development at Drum Farm, which indicates housing at North Drum and a business park at South Drum. The production of a masterplan was a requirement of the BLP. The original version of the masterplan was formally approved by the council in 1999. Whilst subsequent revisions to the masterplan have not been given the same formal approval, nevertheless, the council has acted on its terms in making decisions on planning applications in just the same way. In any event, I have not been made aware of whether the revisions have affected the areas of the appeal proposals, and especially the business park, in any

significant respect. The masterplan has not been through statutory procedures in the same way as a development plan, but, in view of the above considerations, I consider that it should attract moderate weight.

38. The feasibility of business park development at this location has been drawn into question. However, only fragmentary evidence has been produced to support that view and, of course, counter-arguments have been made on your part. The cases which have been made are superficial and largely unsupported by evidence of substance. I would not be justified in forming an opinion which resulted in rejection of the BLP zoning on such a basis. I therefore set this matter aside.

39. The fears which have been expressed of a future housing proposal for the site should it remain within the Urban Limit relate to a hypothetical proposal which is not before me. Any such proposal would have to be considered in relation to its individual merits at that time and is not relevant to the present appeal.

40. The issue of proposals for the Bo'ness Foreshore has been introduced at a late stage in the proceedings. It is claimed that these would result in a housing land supply in excess of the development plan requirement, with the implication that the justification for the housing element of the appeal proposals is now in question. However, there is no indication that these Foreshore proposals have the support of any development plan allocation or policy (unlike the appeal site) and they would appear to be at an early stage of preparation. I therefore place no weight on this matter.

41. I turn next from matters of principle to the more detailed aspects of the proposals. The hotel/restaurant facility within the business park goes beyond the local plan allocation and the masterplan. I do not consider that it can be considered to be ancillary to the business park use. It is not apparent that potential problems which could arise from the joint use of some of the roads by business traffic and customers of the hotel/restaurant have been considered. There is no evidence that this use is essential to the overall scheme and I am satisfied that it could be separated out without detriment to the rest of the scheme. I therefore conclude that, in the absence of more thorough justification, this element of the proposals should be rejected.

42. The addition of a small housing development in the Miller Pit Head area was not foreshadowed in the BLP, but was included in the masterplan. However, the submitted layout is only indicative, so the appropriateness of this location for housing can be left to reserved matters stage. The same applies to the "community use buildings" indicated for land adjacent to Miller Pit Head. The provision of such a facility is entirely appropriate in a new housing estate of this size so the principle is acceptable. However, it has been argued that it should be located on the same side of Grahamsdyke Rd as the new housing estate or, alternatively, that a commuted payment towards the Hippodrome facility in Bo'ness should be made in lieu of the provision of those buildings. These options can be dealt with as reserved matters.

43. Whether other sites should be developed in preference to the appeal site is not an issue before me. My remit is solely the acceptability of the proposed scheme on its own merits. There has been no evidence of substance to support objections on the grounds of traffic generation and the council's Transport Planning Unit is satisfied that traffic issues can be resolved through a requirement for further information on road traffic volumes and junction standards. Similar comments are applicable in relation to possible noise impact. Many of the other issues raised by third party opponents of the proposals relate to the principle of the development and will have been considered when the allocations were made in the BLP. It is not therefore appropriate to attempt to revive those debates at this stage.

44. In view of my conclusions so far, it is appropriate to consider the matter of conditions. No suggested list of conditions was supplied by the council as it should have done in accordance with procedures. Some of the consultees have suggested conditions. You accepted that "normal" conditions should be applied but have not specified those or commented on any of the consultee suggestions.

45. Some of the opposition of local people seems to derive from the perception that the business park would be ugly and therefore provide a poor impression of Bo'ness on the eastern approach to the town. Some letters of objection refer to the utilitarian industrial estates elsewhere in Bo'ness. However, the development of South Drum was conceived as a "prestige business park" and would be confined to Class 4 uses (commercial office, research and development and light industry). There are many examples of such developments elsewhere which are visually attractive and are used as gateway features to settlements. The concept can be controlled by a condition which requires a design brief (as indicated in proposal BUS1 of the BLP) to specify high quality landscaping on this gateway site to Bo'ness, together with a standard of building commensurate with its description as a prestige site.

46. A height limitation condition has been recommended by BAA in connection with aviation safety and this is justified in view of the proximity of Edinburgh Airport. Unfortunately, the consultation response as supplied to me is not clear as to whether the condition should apply to the entire site or only part. On a precautionary basis, I therefore propose to apply the condition to the whole site.

47. SNH has recommended three matters to be included in a planning agreement for any permission. Your clients have not accepted the need for such an agreement and it could not be imposed. In any event, the matters suggested for that agreement can be dealt with by the imposition of normal planning conditions other than for a management regime for woodland to the north of the site (Kinnigars Wood). That woodland lies outwith the application site but within the masterplan. The latter states that there will be management and new planting in the woodland and a path to link Kinnigars Park with the cemetery. This is an integral part of the overall scheme and is related to the phases of residential development within the appeal site. It should therefore be the subject of a negative suspensive condition.

48. SEPA has recommended several conditions, none of which have been disputed and all of which I consider would be necessary.

49. Other matters relating to conditions have been considered elsewhere in my conclusions. All of the conditions to be imposed satisfy the six tests contained in SODD Circular 4/1998.

50. I therefore find that the proposals are consistent with the development plan, albeit the most supportive component of that plan – the BLP – should carry reduced, but still significant, weight. The business park element of the proposals is contrary to the provisions of the CDFCLP, but that carries only limited weight. All elements of the proposals are in line with the masterplan for Drum Farm, which carries moderate weight. Other issues which have been raised carry only negligible weight or are not relevant. As the other material considerations do not justify an exception to the development plan, I conclude that the appeal should be allowed. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based.

51. In exercise of the powers delegated to me I therefore allow your clients' appeal and grant outline planning permission for a mixed use development comprising residential, business, leisure facilities and ancillary works at Drum Farm, Bo'ness in accordance with planning application reference F/2004/0063 dated 30 January 2004, subject to the following conditions:

- 1) Before development commences, written approval from the planning authority must be obtained for the details of the siting, design and external appearance of any buildings, the means of access and the landscaping (collectively termed "reserved matters"). The quality of siting, design, external appearance and landscaping of the business use area shall be the subject of a design brief, to be submitted for the written approval of the planning authority. The brief shall reflect the gateway and prestige concepts referred to in the submissions accompanying the planning application. Details of recreation facilities within the residential areas shall also be included in the details submitted.
- 2) Plans and particulars of the reserved matters shall be submitted for consideration by the planning authority and no work shall begin until the written approval of the authority has been given.
- 3) Application for the approval of reserved matters shall be made to the planning authority within 3 years from the date of this permission.
- 4) The development hereby permitted shall commence within 5 years from the date of this permission, or within 2 years from the date of approval by the planning authority of the last of the reserved matters to be approved. *Reason for conditions 1-4: to comply with section 59(2) of the Act and the masterplan and see paragraph 45 above.*
- 5) The hotel element of the development as proposed is not permitted. *Reason: see paragraph 41 above.*
- 6) No building or structure exceeding 180m AOD shall be constructed within the site. *Reasons: so that the Obstacle Limitation Surfaces detailed in CAA publication CAP168 are not breached; and to avoid endangering the safe operation of aircraft through interference with navigational aids.*
- 7) The business uses shall be confined to Class 4 of the Town and Country Planning (Use Classes) (Scotland) Order 1997, as amended. *Reason: see paragraph 45 above.*
- 8) No development shall commence until a traffic impact assessment has been submitted to and agreed in writing with the planning authority. The measures recommended in the agreed study shall be implemented thereafter. *Reason: in the interests of the safety and control of traffic movement.*
- 9) No development shall commence until a management regime for Kinnigars Wood has been submitted to and approved in writing by the planning authority. That regime shall be implemented thereafter. *Reason for conditions 8 and 9: to reinforce the landscape setting of the development, contribute to neighbourhood amenity, and improve wildlife habitat.*
- 10) No existing trees on the site shall be removed without the written approval of the planning authority.
- 11) The Iron Age enclosure within the site shall be fenced off for the duration of construction works on adjacent land. *Reason: to protect the archaeological interest of the site.*
- 12) Drainage shall be on the separate system.
- 13) No development shall commence until a comprehensive and detailed SUDS scheme for the site (or such sub-divisions of the site as the planning authority agree), in accordance with the relevant CIRIA design manual, has been submitted to and approved in writing by the planning authority (in consultation with SEPA and Scottish Water).
- 14) There shall be no culverting of water courses. The possibility of de-culverting and restoring the top end of Carriden Burn at the site shall be investigated; those works shall be implemented unless the planning authority agrees in writing that this is not feasible or desirable.

- 15) Drainage from domestic sewage, service yards, loading bays and waste skip storage areas shall be connected to the public foul sewer. Work shall not commence on any phase of the development until the planning authority is satisfied (after consultation with Scottish Water), and has agreed in writing, that there is sufficient capacity in the public foul sewerage system for that phase. *Reason: the capacity of the existing sewer network downstream of the proposed development may not be able to support a development of this size without prior upgrading.*
- 16) No development shall commence until details of facilities to be provided for the separation and recycling of waste have been submitted to the planning authority and (in consultation with SEPA) agreed in writing. *Reason: to ensure that adequate facilities are provided.*
- 17) A method statement regarding the protection of watercourses and SUDS features from pollution during the construction works shall be submitted to the planning authority for written approval (in consultation with SEPA) and implemented thereafter. *Reason: to protect watercourses and SUDS features from pollution.*
- 18) No development on any phase shall commence until the planning authority has expressed its satisfaction in writing that the stability of the land has been investigated and any necessary remedial works are to be undertaken. *Reason: to check that the developer takes appropriate steps to ensure the stability of the land for development.*

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

53. A copy of this letter has been sent to Falkirk Council, SNH, SEPA, Scottish Water, the Coal Authority, BAA and Bo'ness Community Council. The decision has been notified to the individual objectors.

Yours faithfully

This was the version issued to the parties on 2 November 2004.

MALCOLM MAHONY
Reporter