



<b>Case reference</b>	NA-HLD-082
<b>Application details</b>	Erection of three (reduced from 4) houses (14/00016/FUL)
<b>Site address</b>	Land to North East of Glen View, High Street, Conon Bridge
<b>Applicant</b>	Mr Brian Elias
<b>Planning authority</b>	Highland Council
<b>Reason(s) for notification</b>	Category 2: Objection by Government Agency (SEPA)
<b>Objectors</b>	1 petition (9 signatures) received to the original proposal for 4 houses. No representations received in relation to the re-notification following the receipt of the amended scheme.
<b>Date notified to Ministers</b>	12 August 2015
<b>Date of recommendation</b>	September 2015
<b>Decision / recommendation</b>	Called-In

### Description of Proposal and Site:

- The proposal is to erect three detached two bedroomed single storey houses, 0.129 ha site, with a new access formed off Riverbank Road and a communal parking court for 6 spaces.
- The site comprises previously undeveloped land (greenfield site) that is disused and overgrown, set down below Riverbank Road, with a steep embankment up to this road to the southeast.
- The site lies within an area identified as at medium to high risk of flooding on the SEPA Flood Map.
- The application was amended from 4 to 3 houses to allow for the retention of trees to the south west of the site.
- A planning application (08/00727/FULRC) was previously approved on 02/02/10 for the erection of a single house on this site. Flood risk was taken into account, and it was considered at that time that the 1 in 100 year flood protection banks to the River Conon afforded adequate flood risk protection. However, this precedes the current guidance on Flood Risk in SPP.

### EIA Development:

- The proposal fits the description of being an urban development project under 10(b) of the table in Schedule 2, but is below the size threshold of 0.5ha. The site is not located within a sensitive area. Therefore the Council's view that no EIA is required is reasonable.

## Consultations and Representations:

- SEPA objects to the proposal on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy. The flood defences for the River Conon were designed to offer protection for a 1:100 year flood event (to include a 0.55m freeboard), whereas Scottish Planning Policy (SPP) states that additional development is not generally suitable in the medium to high flood risk category in undeveloped and sparsely developed areas, in which category SEPA considers this site falls. Medium to high risk means an annual probability of coastal or watercourse flooding greater than 0.5% (1:200 years)
- The Council's Flood Risk Management Team also objects to the proposals due to the lack of freeboard on the River Conon defences and due to the lack of information regarding surface water flooding.
- There are no objections from other statutory consultees.
- A letter of representation was received from the residents of Riverbank Road (9 signatures), raising objections to the original proposal for 4 houses. No further comments were received following the submission of amended plans for 3 houses. Objections related to access and flooding issues.
- Following notification, the Scottish Government's Managing Flood Risk Team was consulted and has recommended that the application be called in due to a lack of meaningful justification for building on the undeveloped floodplain and the undesirable precedent it would set. The Team raises a number of concerns regarding the proposed development:
  - the three proposed single storey houses are to be built on a greenfield site that lies within the 1 in 200 year flood plain;
  - residential buildings are considered the most vulnerable use;
  - although there is an existing Conon Bridge flood protection scheme, this only provides protection up to a 1 in 100 year event;
  - there are no plans to upgrade the flood protection scheme and even if there were, the principle of avoiding building on undeveloped land in the flood plain would still apply;
  - the proposals would involve land raising, which reduces the storage capacity of the flood plain without any mitigation measures. SPP states that land raising should only be considered in exceptional circumstances, where it is shown to have a neutral or better impact on flood risk outside the raised area and that compensatory storage may be required;
  - they reiterate SEPA concerns about the existing level of the land. While the developer claims the site is 3.9m Above Ordnance Datum (AOD), SEPA's own data suggests that ground levels are actually about 1m lower than that, with most of the site being a localised depression and below 3m AOD;
  - they also agree with SEPA's views on the inadequacy of the developer's proposed freeboard levels, which are approximately half normally recommended levels;
  - A further consideration is the fact that the Association of British Insurers have made very clear that their members will not have any obligation to insure new houses built post-2009, and that such houses will not be eligible for inclusion in the Flood Re scheme.

- In deciding to grant planning permission, the North Planning Applications Committee of the Highland Council simply notes that the existing flood protection scheme protects the site up to a 1 in 100 year event. It ignores the fact that SPP states that undeveloped and sparsely developed areas with an annual probability of flooding greater than 0.5% (1:200 years), are generally not suitable for additional development unless the location is essential for operational reasons, and makes no attempt to justify this. Consequently, the Flood Risk Management Team believes that it would set an undesirable precedent if the decision was to go unchallenged.

### **Assessment:**

1. The Council is minded to grant planning consent for this proposal against the advice of SEPA and the application has been duly notified to Scottish Ministers as a result of that objection.
2. The application was recommended for refusal by officers, however this decision was overturned at Committee. In deciding to grant planning permission, Highland Council considered that the proposal meets the 1 in 100 year flood event with an appropriate standard of freeboard and, as such, complies with the existing settlement pattern of the area.
3. SEPA's concerns relate to the risk of flooding from the River Conon. SEPA advises the Conon Flood Protection Scheme does not provide, in their view, protection from a 1:200 year protection standard required, and hence this development proposal would be at risk of flooding. SEPA questions the developer's claims about the existing level of the land. While the developer claims the site is 3.9m AOD, the topographic data that SEPA possesses, including LIDAR data, suggests that ground levels are actually about 1m lower than that with most of the site being a localised depression and below 3m AOD.
4. As the site falls within the medium to high flood risk category, and is an undeveloped site, SEPA considers that it is not generally suitable for development, as set out within the Scottish Planning Policy.
5. The applicant has carried out a Flood Risk Assessment (FRA) in support of the proposals. However, SEPA has concerns over aspects of the FRA. It notes that the Executive Summary of the FRA states that the Conan Flood Prevention Scheme has a standard of Protection of 0.5% (1:200) including a 0.55m allowance for freeboard. SEPA, however, considers that this information is not accurate and the report from which it is quoted has been incorrectly interpreted.
6. The Council's own Flood Risk Management Team requested further information on ground levels and on drainage to allow a robust assessment of the flood risk. Information on ground levels was required to confirm that the site is elevated above the ground that is predicted to flood and also with regard to ground raising which was suggested by the applicant as a potential mitigation measure, but does not appear to have been agreed in a proposed condition. Information on

drainage was required to support an assessment of the likelihood of surface water flooding. But this information was not forthcoming.

7. SEPA and the Council's Flood Risk Management Team both consider that a 250mm freeboard, part of the Conan Bridge Flood Protection Scheme, is insufficient at this site and is half the normal recommended levels.
8. The Scottish Government's Managing Flood Risk Team has expressed significant concerns regarding this proposal and recommends that the application be called in due to a lack of meaningful justification for building on the floodplain and the undesirable precedent it would set.
9. With regard the 1:100 year level of protection provided by the Conan Bridge flood protection scheme, there is no requirement under Flood Risk Management (Scotland) Act 2009 for flood defences to be built to a particular standard, it is for the local authority to determine what is the most appropriate and sustainable level of protection required to protect existing properties.
10. The Risk Framework of Scottish Planning Policy states that residential development may be suitable within built up areas provided flood protection measures to the appropriate standard already exist and are maintained, are under construction, or are a planned measure in a current flood risk management plan. This particular proposal is considered to be within an undeveloped area. In such areas, the Risk Framework of SPP states these are generally not suitable for additional development, unless the location is essential for operation reasons.
11. To summarise, the application is for permanent single storey housing in a 1 in 200 year floodplain on undeveloped land. Based on the information submitted, the proposal gives rise to significant concerns over flood risk. It is considered that the proposal would not comply with national policy on flooding, and inadequate justification has been given for departing from national policy in this instance. In addition, mitigation options suggested by SEPA and the Council's own Flood Risk Team do not appear to have been adequately explored or conditioned.
12. In conclusion, while the scale of the proposal would not normally warrant national attention, for the reasons set out above, it is considered that the way in which flood risk has been assessed raises issues of national importance that would benefit from further scrutiny by Scottish Ministers.

**Decision/Recommendation:**

13. It is recommended that the application is called in.