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OUR REF NAT0035.0106
YOUR REF NOD-390-001

23 October 2024

Dear Sirs

DPEA Ref. NOD-390-001

Planning application to Stirling Council (“Council”) for the Formation of Trotting Track (Class 11 Assembly and Leisure), Including Associated Drainage And Erection Of Amenity Facility For The Provision Of Toilets And Including A Licensed Bar And Hot Food And Drink, All Takeaway (Sui Generis) And Also The Formation Of Competitor And Spectator Vehicular/Footway Accesses And Parking Areas (Planning Reference 23/00612/FUL) (“Application” and where the context admits “Proposed Development”) Scottish Harness Racing Club (“Applicant”)

This submission is supplementary to the existing objection made by the National Trust for Scotland (NTS). We are grateful to the Reporter for their consideration of our submission. For the avoidance of any doubt NTS strongly objects to the Application, which lies wholly within the boundary of the Battle of Bannockburn as defined in Scotland’s Inventory of Historic Battles.

Statutory Purpose of the National Trust of Scotland

The General Purpose of the National Trust for Scotland are set out within The National Trust for Scotland Order Confirmation Act 1935, which provides: -

“4(1) The National Trust for Scotland shall be established for the purposes of promoting the permanent preservation for the benefit of the nation of lands and buildings in Scotland of historic or national interest or national beauty...and as regards lands for the preservation (so far as practicable) of their natural aspect and features...”

The National Trust for Scotland Order Confirmation Act 1938 further provides for the extension of such purposes to include:

“the promotion of the preservation of buildings of architectural or artistic interest and places of historic or national interest or natural beauty and the protection improvement and augmentation of the amenities of such buildings and places and their surroundings; ... The access to and enjoyment of such buildings places... by the public; and all such purposes shall be deemed to be purposes of the Order of 1935....”

Background

The battle of Bannockburn is known internationally as a key battle in the Scottish Wars of Independence, defining Scotland's identity, culture and history. The site of battle is included in the Inventory of Historic Battlefields (Appendix 1) and its associated commemorative buildings (which are owned and operated by the NTS) (including the Rotunda, Memorial Cairn, Flagpole and equestrian statue of Robert the Bruce) are Grade “A” Listed Buildings (**Listed Building reference LB49860**). The historical and cultural importance of this battlefield and associated built heritage to Scotland and internationally cannot be understated and the calling-in of the Application by the Scottish Ministers on grounds of Proposed Development's potential impact on the Bannockburn Rotunda and designated battlefield evidences the importance that Ministers are placing on this Application which requires a detailed and thorough assessment.

Public Support & Interest

NTS currently has 340,000 members, many of whom have contacted us directly or engaged with us through our social media channels to express their concern about the potential developments on the battlefield. To illustrate this during a 10-day period from 12 to 22 August we had 88,000 separate direct digital interactions off the back of a web story and email, raising our concerns about this development. The story has featured heavily in the mainstream press with strong editorial support for protecting the battlefield. This emphasises the level of public interest and scrutiny this development proposal has generated.

Landscape Impacts

A principal failing of the assessment and determination process to date has been the lack of an appropriate assessment of the landscape and visual impact of the proposal and specifically the failure to provide an assessment of effects on landscape receptors. To address this we refer the Reporter to the enclosed Landscape and Visual Impact Report (“**Report**”) by Douglas Harman (Appendix 2), who is a qualified landscape architect. We adopt this Report in its entirety for the purposes of this objection.

As evidenced in Section 2 of the appended report, the applicant's evidence in relation to landscape and visual matters is considered to be technically flawed. With a wide range of fundamental errors and the failure to provide some essential information, it significantly understates or fails to recognise the nature of all landscape and visual effects. As such, the

applicant's submission is not fit for purpose and therefore, it cannot be relied upon by the Reporter when determining the application.

Furthermore, as detailed in Section 3 of the report, the Case Officer has based their policy appraisal and associated recommendation of approval on a lack of information and more worryingly, the full support of a submission from the applicant that is fundamentally flawed. In reaching their decision therefore, the Council has not fully considered the nature of all likely landscape and visual effects.

Given that the applicant's submission and the Council's decision are both fundamentally flawed, Section 5 of the report provides a robust appraisal of the significant landscape and visual effects that are likely to arise from the proposed development.

Relevant legislation

In the first instance, we consider it necessary to set out the legislative framework against which the Application should be assessed. Regrettably, the Report to Committee is silent on the key statutory tests and the interaction between them. The starting point for any application which affects a listed building or conservation area, is Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, which states:

*"(1) In considering whether to grant planning permission for development which **affects** a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have **special regard** to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*

(2) ...

(3) In this section, "preserving", in relation to a building, means preserving it either in its existing state or subject only to such alterations or extensions as can be carried out without serious detriment to its character, and "development" includes redevelopment."

The setting of the listed buildings includes views to, over and from those listed buildings. In making any assessment concerning the acceptability of the impacts on the setting, the legal test is that special regard must be had by the decision maker to the desirability of preserving their setting. We do not consider that this duty was properly exercised by the planning authority in its assessment of the Application.

In the context of the Application, we consider that the proposal will adversely affect the listed building's setting, which includes the designated Bannockburn Battlefield. Further, as the English equivalent (Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990) to the above Scottish provision is almost identical, we direct the Reporter to the English case of *East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another* [2015] 1 W.L.R. 45. In this case, it was held that in enacting s.66(1), Parliament had intended that the desirability of preserving the setting of listed buildings and deciding whether there would be some harm should not just be given careful consideration by

the decision-maker but should be given "**considerable importance and weight**". Regrettably, the planning authority has not given considerable importance and weight to the "special regard" in its decision making as required.

Development Plan

Notwithstanding the above, under Section 25 of the Town and Country Planning (Scotland) Act 1997, the Application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this matter, the Development Plan consists of Stirling Council Local Development Plan ("LDP") (adopted 2018) and National Planning Framework 4 ("NPF4") (adopted 2023), which is the later document.

First of all, we draw the Reporter's attention to policy 7 of NPF4. Policy 7(j) states that "Development proposals affecting nationally important Historic Battlefields will **only** be supported where they protect and, where appropriate, enhance their cultural significance, key landscape characteristics, physical remains and special qualities."

The phrasing of such a policy is restrictive, rather than permissive. In other words, if the development does not demonstrate the protection or enhancement of a nationally important Historic Battlefield, then it will not be supported (i.e. it ought to be refused). The Application fails to meet this policy requirement. Indeed, the Proposed Development negatively effects Bannockburn battlefield in terms of landscape and visual impact, as can be seen in the Report by Douglas Harman. Across 4 different significant viewpoints identified in the Report, the impact of the Application is measured as **major** and **significant**. It therefore cannot be reasonably concluded that the Proposed Development protects or enhances this Historic Battlefields' cultural significance. As this policy relates specifically to nationally important Battlefields, very significant weight must be attached when assessing the Application.

In this regard, we also draw the Reporter's attention to Primary Policy 7 in Stirling Council's LDP, which broadly seeks to implement a similar level of protection to the Conservation of Historic and Natural Heritage.

Policy 7.1 outlines that:

*"There will be a presumption against development that would have an adverse effect on a scheduled monument or on the integrity of its setting except in exceptional circumstances. **The same presumption will also apply to other nationally important monuments.**"*

We therefore consider that all planning applications before Stirling Council which will negatively impact the setting of nationally important monuments should be refused **unless** the exceptional circumstances test are met. It is reasonably considered that no exceptional circumstances apply in respect of the application and accordingly the Application should be refused. We do not consider that this was the starting position for the Council's Planning Committee.

Policy 7.8 also adds an additional layer of protection specifically to any Development affecting Battlefields. It states that:

*“Development which would have a significant adverse effect upon the archaeology, landscape features, character and setting of sites listed in the Inventory of Historic Battlefields **will not be supported unless** it can be demonstrated that the overall integrity and character of the battlefield area will not be compromised. Where approved, proposals and developments affecting Inventory sites will require an appropriate level of mitigation, and measures (to be agreed with the Planning Authority) must be taken to conserve and enhance the essential characteristics, aesthetics, archaeological, historical value and setting of the battlefield.*

Much like NPF4 policy 7, this LDP policy reaffirms that development in the vicinity of a Battlefield shall only be permissible in very limited circumstances. The Application does not meet these circumstances, as it compromises the overall integrity and character of the Designated Battlefield. As acknowledged in Bannockburn battlefield’s Inventory:

*“The general area of the first day of fighting was around New Park, roughly in the area where the NTS visitor centre stands. [however] Parts of the landscape of the first day of the battle have been covered with housing estates, and it is possible that the location of the fighting has been substantially redeveloped with the loss of any military artefacts or physical remains. **Consequently, any remaining undeveloped open ground within this area has important potential for the survival of associated material of the first day of the battle**”*

The Application site forms part of one of the few remaining areas of undeveloped open ground and therefore the requirement for its protection from development has a consequent elevated importance, as envisioned by the Battlefield’s inventory.

Effect on a Listed Building

Policy 7.3(a) of the LDP provides that:

“The layout, design, materials, scale, siting and use of any development must preserve the character of the Listed Building and its setting. Where this is not proposed, development will be refused. There is a presumption against demolition or other works that adversely affect the special interest of a building or its setting.”

Such policy provision follows section 59 of the Planning (Listed Buildings and Conservation Areas) (S) Act 1997, as discussed above. It is reasonably considered in light of the Report conducted by Douglas Harman, that the Proposed Development will undoubtedly harm the setting of the Listed Buildings and should not be granted planning permission.

Managing Change in the Historic Environment – Historic Battlefield

This guidance, with which the Reporter will be familiar, sets out HES’ planning guidance and it is a material consideration in this appeal. It is surprising that neither the planning authority nor HES have referred to this guidance (however it has been referenced in Douglas Harman’s Report). This guidance states that a proposed development should address the impact it makes on *“each battlefield’s key landscape characteristics, specific physical qualities and archaeological*

potential". We consider that such key landscape characteristics have been overlooked. The guidance notes that:

"the terrain of a battlefield influences how and where it is fought. This landscape context helps us to understand and appreciate the battlefield. It can also provide a sense of place, contributing to remembrance and commemoration of the battle."

"Significant impacts on landscape context can reduce our appreciation and understanding of the battlefield. Assessments should report any potentially significant impacts on the following factors:

Integrity: the level of preservation of the landscape context, including the survival of key views and lines of sight, and relationships between different elements of the battlefield landscape.

Significance: the contribution of the landscape to understanding and appreciating the battlefield, including how the terrain and topography relate to the events of the battle.

Character: the land form, land cover and settlement pattern within the battlefield and the surrounding terrain, including the scale of the landscape in relation to the scale of any proposed changes.

Experience: the contribution of the landscape to our experience of battlefield, including less tangible elements such as sense of place and resonance in local and national culture."

We consider that Bannockburn's topography is of major significance, and it is widely held to have influenced the events of the historic battle. This is evidenced in the Battlefield's inventory:

"The topography of a substantial area of the first day of battle and the Scot's camp near the Whins of Milton survive as open land, now within the ownership of the NTS. This undulating landscape appears to have been key to Bruce's choice for a camp on the higher ground overlooking the castle to the north and the line of the Roman road to the west. The spatial relationships between these key landscape features can still be interpreted on the ground"

Neither the Council nor HES appear to have properly considered the significance of the topography and the role that the lower lying planning site played in the battle. The key viewpoints as selected by Douglas Harman, show that the Application, if granted, would be visible from the Rotunda. HES themselves concede that the Proposed Development would *"cause some visual impacts"* but have underestimated the importance of the views - particularly from the listed Rotunda down and over the Application site. This is a fundamental part of the tourist and visitor experience, where the events of the Scottish Wars of Independence can be recalled against the identical backdrop that Robert the Bruce encountered in 1314. The Application site must be preserved for Scotland's cultural and historical interest. Indeed, it is

what makes Bannockburn's battlefield so remarkable in the modern age, as its inventory denotes these special features.

We are very disappointed that HES have chosen not to object to the Application and consider that they are mistaken in their assessments of both the impact of the Proposed Development on the inventoried battlefield and the setting of the Grade "A" listed Rotunda. We refer the Reporter specifically to paragraph 3.6 of the Report.

Overall conclusions

Planning applications **must** be decided in accordance with the Development Plan unless material considerations indicate otherwise. The Proposed Development is contrary to the provisions of both the Local Development Plan and the National Planning Framework 4, as set out above. S59 of the Listed Building and Conservation Area (Scotland) Act 1997 requires that the special regard **must** be given to the preservation of the setting of listed built heritage. Due to the adverse effects on the setting of the listed building, as set out in the Report, we contend that the Scottish Ministers must give priority in their planning decision making on this Application to the protection of the listed built heritage. Further, the Proposed Development will involve the unacceptable development of an inventoried battlefield. Although the Proposed Development will deliver some economic and other benefits these do not outweigh the very strong case against permission being granted. **Accordingly, the planning Application ought to be refused.**

In the event that the Reporter requires these matters to be considered at a hearing session, then we should be obliged to be given the opportunity to participate.

Yours faithfully



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List of Appendices:

- Appendix 1 – Battle of Bannockburn Inventory Statement
- Appendix 2 – Landscape and Visual Impact Report (D Harman)
- Appendix 3 – Viewpoint photographs

