

09/00796/FUL
5th May 2009

Raise the ground level at Barmuckity Farm Elgin Moray for
The Moray Council

Comments:

- MEMBERS WILL HAVE VISITED THE SITE
- Application is major development and integral part of Elgin Flood Alleviation Scheme
- The application is made by the planning authority
- Advertised as a departure from the development plan.
- 1 representation received

Procedure:

- If minded to approve:
- notification to the Scottish Ministers not required under Circular 3/2009
- pre-determination hearing and reference to Council not required.
- hearing not recommended

Recommendation:

- i) adoption of Appraisal (by SNH) as the Council's "Appropriate Assessment"
- ii) the following conditions

Note: For the purposes of this schedule, "Elgin FAS" refers to Elgin Flood Alleviation Scheme; "ES" refers to the Environmental Statement (as submitted with application 08/00077/EIA) and "Addendum" refers to the Addendum to the ES (as submitted with application 09/00796/FUL)

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. Upon completion of the development, as soon as practicable after doing so, the attached Notification of Completion of Development shall be completed and submitted to the Council, as planning authority to give notice of completion of the Elgin FAS development.
4. The Elgin FAS shall not be progressed without the development hereby granted, which forms part of and shall be developed in conjunction with the Elgin FAS works as approved under formal decision notice 08/00077/EIA dated (insert date). As the works to raise ground levels will be undertaken as an integral part of the Elgin FAS (Addendum refers), the terms and conditions of that development are hereby re-iterated in so far as they relate to this development including requirements for a phased programme of construction to include this work, for Construction Method Statements

and for an Environmental Action Plan to identify all construction and mitigation measures to be applied and adopted during construction and operation of the Elgin FAS.

5. No development shall commence until details have been submitted to and approved by the Council, as planning authority regarding:
 - a) in consultation with the Council's Adviser, Aberdeenshire Archaeological Services, a scheme for the implementation of a programme of archaeological work in accordance with a written scheme of investigation. The required scheme details shall include the arrangements for archaeological watching briefs during groundbreaking works, photo/building surveys, as appropriate and the recording and recovery of archaeological resources within the development site.

and

- b) thereafter, the development shall be implemented in accordance with the approved details.
6. There shall be no direct vehicle access to/from the A96; Trunk Road for construction related traffic between Waulkmill Cottages and Elginshill Road junction.
7. There shall be no storage of materials or tipping under the overhead transmission lines which cross the site.
8. If significant unsuspected contamination is found during development then all work on that individual area of land shall cease until an appropriate investigation to determine the nature, extent and potential impacts of the contamination has been undertaken and a remediation method statement has been agreed in writing with the Council, as planning authority.

Reasons:

1. The time limit condition is imposed in order to comply with the requirements of Section 58 of the Town and Country Planning (Scotland) Act 1997, as amended.
2. In order to ensure that there are no unauthorised departures from the approved plans which could adversely affect the development or character and amenity of the surrounding area.
3. In accordance with the requirements of the Town and Country Planning (Scotland) Act 1997 as amended, and to ensure that the Council, as planning authority is aware that the development is complete and is able to follow up any conditions.
4. To ensure an acceptable form of development, this additional flood defence being considered as an integral part of the Elgin FAS (Addendum refers). This land area is included within the application site boundary for application 08/00077/EIA. Details of the works to raise ground levels were omitted from that development although account of an embankment at this locality was included in the modelling exercise used to assess

flood risk. Without this element of the Elgin FAS, property would be placed at increased risk downstream of Elgin.

5. To ensure an acceptable form of development where details are currently lacking from the submission and to safeguard and record the archaeological potential of the area, both known and unknown archaeological features.
6. To minimise interference with the safe and free flow of traffic on the trunk road.
7. To ensure an acceptable form of development in health and safety terms and to manage the risk associated with Elgin FAS works and operations in proximity to overhead transmission lines.
8. In order to safeguard the health and safety of any construction workers, future site users, building structures and the local environment from the impacts and effects of harmful ground contamination.

List of Informatives:

The DEVELOPMENT CONTROL MANAGER has commented that: -

Details of consultation responses have already been forwarded to the Council's agent.

An appraisal (by SNH) on the impacts of Elgin FAS upon Loch Spynie SPA has been adopted by the Council as its "Appropriate Assessment".

The applicant/developer/contractor's attention is drawn to the obligations to submit Notices of Initiation of Development and Completion of Development, the latter upon completion of each phase of the development and to display notices on site(s) during construction, in accordance with the Town & Country Planning (Scotland) 1997, as amended.

From the ES (Chapter 7, 7.133) the agreement is noted that the River Lossie footpath from Morrision playing fields to Elgin Cathedral will be extended from its current downstream point at Pansport Bridge to the new confluence of the River Lossie with the Tyock/Linkwood Burns using the maintenance tracks along the proposed embankments. Although not part of the current scheme, the Elgin FAS works presents opportunities and potential to utilise the maintenance tracks along embankments as footpaths e.g. as part of any Core Path initiative and/or as a cycle path for public access (Chapter 7, Appendix 7D, 7.84). Whilst this may not be within the scope of the Elgin FAS works as proposed further consideration should be given to use the defence embankments to create and enhance the provision of footpaths, including core paths and cycle paths, the latter to incorporate some or all of the embankments into the NNR1 cyclepath or to extend the A96 trunk road cycle path.

The BUILDING STANDARDS MANAGER has commented that: -

A Building Warrant will not be required

TRANSPORT SCOTLAND - TRUNK ROADS NETWORK MANAGEMENT has commented that -

Details of proposed routing, access to site, timings of deliveries and anticipated delivery rates for construction traffic to undertake the works shall be submitted in advance of the start date to the operating company, BEAR Scotland.

SCOTTISH & SOUTHERN ENERGY has commented that -

See consultation response dated 19 May 2009 requiring all works to be carried out in accordance with health and safety guidance, including precautions to be taken and a detailed method statement for works in proximity to the transmission line

Comments received from SCOTTISH WATER are attached for your information.

SCOTTISH NATURAL HERITAGE has commented that: -

See consultation response (including appendices) date 17 June 2008. This includes an appraisal prepared by SNH regarding the impacts of the Elgin FAS upon Loch Spynie SPA, which concludes that whereas the potential effects on Loch Spynie SPA could constitute a likely significant effect, the conservation objectives for each of the qualifying interests are likely to be met and there would be no adverse impact on the integrity of the site

In addition the response includes information and advice, including legislative requirements for protected species, both European Protected Species and national and local interests, and indicates that for licences for otter and possibly, bat will be required from Scottish Government before any works can commence.

Appendix 4 includes requirements for conditions to overcome SNH's objection to the Elgin FAS. The Applicant's attention is drawn to the various advice provided, including the information and details that should be considered/provided in the submission of Construction Method Statements, the EAP, etc for otter, bats, and water vole, salmon and sea trout (salmonids) and the aquatic environment, birds, and badger interests. This includes specific measures to minimise impacts on local populations of these species

In relation to freshwater pearl mussels, SNH draw the Council's and the applicant's attention to the strict protection afforded to this species and the developer's duty to ensure that the Elgin FAS work does not disturb or harm freshwater pearl mussels. In advising of the protection afforded, SNH expect the developer/MFA to be aware of this protection afforded to the species and of the need to carry out pre-construction surveys in areas that could afford potential habitat for mussels and incorporating precautions to protect salmonids and salmonid habitats (to be addressed in the required statements/plans) should afford protection for this species.