

Flamingo Land's appeal against the LLTNPA's refusal of planning permission at Balloch (2)

Description

OBJECTIVE 1 **DELIVER STRATEGIC DEVELOPMENT NEEDS**

National and locally identified strategic development needs are being planned and delivered.

ACTIONS

IN DELIVERY

- » Ensuring nationally strategic infrastructure development, identified in National Planning Framework 4, is designed and delivered in ways that are cognisant to the National Park's special environmental and landscape qualities and maximise benefits to local communities, businesses and visitors.
- » Supporting the delivery of the strategic development needed at:
 - Callander - to support sustainable expansion of the town and more local living outcomes,
 - Balloch - to improve Balloch as a main visitor and transport interchange hub for the National Park
 - Arrochar and Tarbet – to support rural regeneration by focussing on vacant and derelict sites causing blight.

DELIVERY PARTNERS

- | | | |
|-------------------------|--------------------------------------|--|
| » Scottish Government | » <u>West Dunbartonshire Council</u> | » Landowners |
| » Stirling Council | » Perth & Kinross Council | » <u>Transport Scotland</u> |
| » Argyll & Bute Council | » <u>Developers</u> | » Scottish Environment Protection Agency |
| | | » Scottish Water |

Extract from Loch Lomond and Trossachs National Park Partnership Plan 2024. Six months before refusing the Flamingo Land Planning Application

the LLTNPA Board had committed to delivering a major development at Balloch along with West Dunbartonshire Council, Transport Scotland and the developer. This plan was approved by the Scottish Government who are hearing the appeal.

Following my first post setting out the background to Lomond Banks appeal and why the Loch Lomond and Trossachs National Park Authority (LLTNPA)'s reasons for refusing the development were so weak ([see here](#) & above), this post considers Flamingo's Land grounds for appeal as set out in their Appeal Statement ([see here](#)) and will form the basis of my own submission to the DPEA ([see here](#) for appeal papers).

The need to counter the LLTNPA's support for much of the Flamingo Land development



Appeal Statement
Lomond Banks

1.8 Summary of NPA Recommendation Report

1.8.1 The NPA Recommendation Report (see Document No. FLL2) is included with this appeal. The detail of the report is examined in the Grounds of Appeal, below, however at this point it is worth noting the summary position set out by the NPA in the report.

Table 1-1 – Summary of NPA Position

Topic	NPA Summary position	Relevant conclusions in NPA Recommendation Report
Principle of development	Acceptable	paras 8.2.11 to 12
Flood Risk	Not Acceptable	paras 8.3.54 to 55
Surface water and Foul Drainage	Acceptable	paras 8.3.64 to 65
Trees and Woodland	Not Acceptable	paras 8.4.42 to 45
Ecology	Acceptable	paras 8.5.48 to 8.5.52
Biodiversity	Not Acceptable	paras 8.6.25 to 26
Traffic and Transport	Acceptable	Paras 8.7.35 to 39
Sustainable Design & Climate	Not Acceptable	Para 8.8.16
Landscape and Visual	Acceptable	Para 8.9.34
Built Heritage	Acceptable	Paras 8.10.45 to 46
Recreation and Access	Acceptable	Para 8.11.19
Socio-Economic	Neutral	Para 8.12.23
Residential Amenity	Acceptable	Para 8.13.33

Extract from Flamingo Land Appeal Statement. Stantec are the firm who developed Flamingo Land'

proposals and have submitted the appeal on their behalf.

This table is a reasonably fair summary of the LLTNPA's position as set out in the report ([see here](#)) considered by their Board in September. Officers found more aspects of the Flamingo Land development acceptable, than not. Ostensibly this was eight to four, with one neutral, but in reality, as I will show, it is more like eight to two

The reason why the LLTNPA judged so much of the proposed development acceptable is that despite the climate and nature crises, despite all the concerns which had been expressed by the public about the development and despite National Planning Framework 4 (NPF4), officers were still trying to give it the go-ahead a year ago.

The LLTNPA's limited concerns about proposed development has played into Flamingo Land's hands at two levels in the appeal.

First, Flamingo Land has tried to use the LLTNPA's position to persuade the Reporter that most aspects of the proposed development are uncontroversial in planning terms. This is why it is important that people who submitted reasons for refusing the development which were not accepted by the LLTNPA do so again and, where possible, provide evidence to discredit the arguments the LLTNPA made in their Committee Report ([see here](#)). Below are some examples but there are lots more:

Principle of Development

"The proposed development for tourism-related uses aligns with the LDP [Local Development Plan]'s Visitor Experience and Mixed-Use allocations, It is therefore supported by both the LDP's spatial strategy and NPF4 Policy 30 a) which is supportive of tourism development on sites specifically identified for this purpose in the LDP."

The land at the Riverside Site in Balloch was allocated for "Visitor Experience" in the Local Development Plan (LDP) (2017-21) without the local community or anyone else apart from Scottish Enterprise and Flamingo Land knowing what this meant ([see here](#)). That was scandalous but that plan is now completely out of date and there is clearly little or no public support for it in Balloch. That would have become undeniable if the LLTNPA had developed a Local Place Plan for Balloch, as it has done for many other local communities in the National Park, or had revised the LDP (a process which keeps getting delayed).

In planning terms, however, where there is a conflict between the LDP and NPF4, the latter takes precedence. Given that the LLTNPA has decided that a significant part of the Riverside Site is now unusable for development because of the new guidance in NPF4 on flood risk, it's clearly a nonsense that they are still claiming the Principle of Development on the site is acceptable. The spatial allocations in the LDP for development in Balloch are clearly no longer fit for purpose.

Flamingo Land's proposed development also includes two small areas which were not included in the LDP for "Visitor Experience". One of these is for car parking, which will help attract even more traffic to

Balloch (see below) but has been judged acceptable by the LLTNPA

Drainage

“The proposed development is considered compliant with the principles of the LDP and NPF4 in relation to management of surface and foul water drainage.”

I have reviewed the video of Board Member Richard Johnson, a hydrology expert, talking about this at the board meeting in September which determined the application. He said that he could see at once from the site visit earlier that day that there was a problem with the three small watercourses which drain the land above Old Luss Rd because they are directed through culverts which easily block. As a consequence Mr Johnson said a Flood Risk Assessment should have been required for the Woodbank House part of the development.

Despite the expert on the board being far from certain that the drainage at Woodbank House could be made compliant with the principles of NPF4 or not, no amendments were paid to the officers' report.

Ecology

The LLTNPA does not use the word “ecology” in its usual sense to describe the relationships between living things and the environment, but far more narrowly, to refer to habitats and species protected by law. Hence why the Committee Report states:

“The required ‘Appropriate Assessment’ has been carried out and concludes that, subject to appropriate mitigation, no adverse impacts on the salmon and lamprey, that are the qualifying interests of the Endrick Water SAC [Special Area of Conservation] will arise provided specific mitigation measures are secured (through conditions).”

AND

“the survey work undertaken by the applicants states that there was no evidence of protected species residing within the site other than bats, although several protected species are likely to use the site for foraging and suitable habitats are present for the majority of species assessed.....However appropriate mitigation, including sensitive design at the detailed stage (for example avoiding loss of trees with high roost suitability), and construction best practice could ensure that there would be no adverse impacts on protected species.”

This is consistent the line the LLTNPA has taken on developments and wildlife law up until now ([see here](#) for example) which is that only species and habitats that are subject to statutory protection matter. It conflicts, however, with the new approach the LLTNPA adopts to woodland in the report:

“The proposal would result in the removal of woodland but fails to demonstrate it can deliver appropriate and sufficient woodland compensation to mitigate the loss of woodland including ancient woodland as a consequence of the proposed development. The proposal would also have an unacceptable impact on the natural environment because of its impact on woodland, including ancient woodland.”

On the one hand the LLTNPA claim trees can be removed without damaging bats but on the other that trees cannot be removed without damaging the woodland. That is the opposite of what ecology is all about: species like bats cannot be separated from the woodland they depend on.

Traffic and Transport (includes parking)

In reaching the conclusion that the impact the development will have on traffic and parking is acceptable the LLTNPA have chosen to rely entirely on conclusions of the Transport Assessment as endorsed by Transport Scotland and West Dunbartonshire Council. These two organisations just happen to be listed as “Delivery Partners” for the major new local infrastructure development listed for Balloch in the NPPP (see above)!.
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Local people know better than anyone about the existing traffic and parking problems at Balloch and are the people best placed to make detailed representations about this to the appeal. It is worth highlighting, however, as Ross Greer and the Greens have done, that on current projections when the development is completed it will result in one additional car every 15 seconds.

Here, I just want to focus on the big picture. The LLTNPA’s Board Report made no mention of what it had recently said about cars and traffic in its new NPPP:

“79% of visitors arrive in the National Park by car and 73% explore the area by car according to our 2019/20 Visitor Survey. If there is no intervention, car-based travel is predicted to increase nationally by 40% by 2037.”

“Addressing these issues requires a long-term, strategic and ‘whole system’ approach. It requires the reprioritisation of sustainable modes of transport and the active de-prioritisation of the private car.”

Arguably the location in the National Park where it would be easiest to do this is Balloch because of *“the accessibility of Balloch to rail and bus”*. By accepting that a development which appears to include something like c390 new car parking spaces is acceptable in principle and *“the detail of parking arrangements for all abilities and modes, would be required to accompany each phase of the development at any detailed application stage”* the LLTNPA has driven a coach and horses (whoops!) through what its NPPP says about the need for more sustainable travel.

The LLTNPA has not stated the number of parking spaces in their description of Flamingo Land’s development and the Board Report made no attempt to assess the impact of all that hardstanding on woodland, nature or the amenity of local people. While the LLTNPA refers to what NPF4 says about *“the need for minimising space dedicated to car parking”* and *“for proposals that are ambitious in terms of low/no car parking, particularly in locations that are well served by sustainable transport modes”*, it

then completely ignores this. There are now car free developments in Glasgow so why not in Balloch?

Instead of actually doing something to tackle cars, parking and traffic the Board Report effectively claimed that as long as Flamingo Land produces a Travel Plan lots more cars and traffic will be acceptable.

Landscape and visual

The LLTNPA now pays almost no regard to landscape in the sense of scenery, instead treating landscape as being primarily about natural habitats and, within this context, development primarily being about “design”. As a result its report concluded “*the National Park Authority considers that the effects on the landscape character and all SLQs [Special Landscape Qualities] would not be detrimental.*” It is this limited interpretation of its landscape remit which has enabled the LLTNPA to approve developments all along the shores of Loch Lomond.

One of the four statutory aims of the National Park, however, is “*to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public*”. Foremost among those special qualities is the scenery, its the reason why people visit Loch Lomond from all over the world and why it is still so valued by people in Scotland despite all the destruction that has been caused by development and industrial forestry practices. Erecting a large new hotel and leisure complex on the shores of Loch Lomond may be attractive from a real estate perspective but is totally contrary to what most people value. The LLTNPA needs to take that on board and start protecting ALL the loch shores in the National Park from development.

Recreation and Access

This disregard of what people value about scenery is also why the LLTNPA has been completely unconcerned about the impact of other aspects of the development on the recreational experience

“The proposal would result in positive improvements to key public routes and the connectivity between Balloch and Loch Lomond Shores. Access rights in all areas would be safeguarded and links to Balloch and wider path networks would be provided and enhanced. It is accepted that there would be some loss of existing public amenity space (notably the amenity grassland at the Riverside) however this needs to be balanced against the proximity of the site to other highly valued amenity space at Moss o Balloch, Balloch Country Park and the proposed improvements to current pedestrian and cycle routes within the site.”

There is no evidence to support claim that the proposal would result in positive improvements to access routes. There are already existing paths through the Riverside Site and there have been no concrete proposals from Flamingo Land, only vague assurances – as the LLTNPA has agreed any plans should be submitted at the detailed planning stage. Many objectors have pointed out that walking through a chalet park is NOT the same as walking through a public park and will have a massive impact on the recreational experience. That has wrongly been discounted by the LLTNPA.

Residential Amenity and Environmental Impacts

Flamingo Land's assessment of the impact of their proposed development on residential amenity is limited to air quality, noise and vibration, lighting and ground conditions. The LLTNPA concludes these can be mitigated, which may or may not be the case, but discounts by far the largest impact on Balloch, the removal of open space by saying people can still go to Balloch Country Park across the River Leven. This ignores the fact that if the development is allowed to go ahead will change the whole character of Balloch, from a village to a tourist resort and that will have a massive impact on the amenity of local residents and visitors.

Built Heritage

The LLTNPA considers two aspects of this in their Committee Report, the Winch House at the Pierhead and Woodbank House, a listed building most of which has collapsed. The LLTNPA discounts the comments from Historic Environment Scotland that building car parks and a hotel and leisure complex at the pierhead will adversely affect the character of the Winchhouse, claiming its the views out to the loch (which would be blocked by the proposed hotel!) which are important. The LLTNPA's focus is on Woodbank House, for which there is no condition report and no plans, only a vague promise from Flamingo Land to restore it, is deemed sufficient to justify turning much of the grounds into another chalet park (with the attendant flood risk).

Personally, I believe Woodbank House is now beyond repair and its grounds probably the most appropriate place in Balloch for new accommodation and, while Flamingo Land's proposals are extremely vague, this is probably the aspect of the development which is most acceptable in principle.

It the LLTNPA was wrong to consider these or most of these eight aspects of the development acceptable, then the second level of Flamingo Land's appeal argument collapses.

In their Appeal Statement Flamingo Land cite advice from the Chief Planner about NPF4 to argue the LLTNPA was wrong to reject their application on one or two specific grounds but instead should have taken a balanced overview:

"The Scottish Ministers have continued to reinforce that policies in NPF4 should be read and applied as a whole and that conflicts between policies are normal and to be expected. The planning system requires decision makers to weigh up all relevant policies, for example, quality homes, brownfield development and town centre living, as well as relevant material considerations in applying balanced planning judgement (section 25 of the Town and Country Planning (Scotland) Act, 1997, as amended). The introduction of NPF4 has not changed this." [Letter Chief Planner June 2024].

Flamingo Land effectively are arguing that the eight aspects of the development the LLTNPA thought acceptable outweigh the 2-4 they found unacceptable and "on balance" therefore the development should be given the go-ahead. The surest way of stopping that argument in this case is if the Reporter

finds the LLTNPA were wrong to find so many aspect of the development acceptable.

Flamingo Land's arguments against the LLTNPA's reasons for refusing the development

After briefly arguing that the LLTNPA supported much of the application, the Appeal Statement devotes many more words on trying to discredit the arguments they gave for refusing it. The deadline for the LLTNPA to respond to these and other criticisms was 31st January but that response, if submitted, was still not published on the DPEA website by the close of business yesterday (3rd February).

I may comment further on how LLTNPA try to counter Flamingo Land's comments but meantime its worth making some general points.

Flood Risk & Sustainable Design and Climate

The LLTNPA has judged the proposed development unacceptable under both these headings, but the only grounds for the design and climate objection is flood risk so they are effectively the same. The LLTNPA has reached his position by deferring considerations about the carbon emissions that will be caused by the development and whether these are compatible with the commitment in its NPPP to reach net zero by 2035 to the detailed planning stage.

This approach contrasts with flood risk which the LLTNPA argues **MUST** be dealt with at the Planning Permission in Principle (PPiP) stage! Effectively, its argument is that as a Planning Authority it can leave the question of whether the proposed Flamingo Land development will **CAUSE** unsustainable carbon emissions to a later date but must consider the **CONSEQUENCES** of climate change for the development up front. In my view both should have been considered at the PPiP stage and the LLTNPA should have insisted on a detailed carbon assessment from Flamingo Land instead of vague promises to be "green".

On flood risk, however, Richard Johnson at the September Board meeting also added a number of points about the risks of flooding at the Riverside Site which had not been considered in the Committee Report. He pointed out that the survey of the River Leven, which had been used to assess flood risk won the site was over twenty years old and that rivers tend to silt up. That would reduce the capacity of the River Leven to discharge water from Loch Lomond and increase flood levels. Mr Johnson also pointed out no account had been taken of the seven gates at the Loch Lomond barrage downstream. While I did not hear him state it explicitly, I think his point was if those gates got stuck or were closed for some other reason flood levels would increase. With so much public infrastructure falling apart due to lack of maintenance that might be a real risk.

As I have argued previously, the strongest grounds the LLTNPA gave for refusing the development related to flood risk and if they now incorporate Mr Johnson's points in their representation to the reporter those grounds will be even stronger. The main risk at the appeal, therefore, is that the Reporter accepts Flamingo Land's argument that their development should not be rejected because of

specific factors like flood risk but should be decided “on balance”.

Biodiversity & Trees and Woodland

Stantec devotes 8 pages to trying to trying to refute the LLTNPA’s arguments on biodiversity and 15 pages to its arguments about woodland. Both come down to the SCALE of the development is such that it leaves not enough room for nature and there is inadequate compensation for losses of biodiversity and woodland.

The logical consequence of this argument is that NOT all of the site should have been allocated for Visitor Experience and rather than accepting the Principle of Development the LLTNPA should have admitted the spatial allocations in its Local Development Plan are completely out of date!

In my view the LLTNPA’s arguments on both these individual points were weak and, as I predicted, Flamingo Land has come back with options for addressing both of them. It will be particularly interesting to see how the LLTNPA responds.

It is worth, highlighting, two of the arguments made by Flamingo Land. The first is that under its (secret) agreement with Scottish Enterprise it is “*entitled to take a long-term lease of Drumkinnon Wood*”. It uses this to argue:

“From a tree cover perspective, Drumkinnon Wood is unaffected by the proposals and remains intact. Drumkinnon Wood however represents a significant opportunity for enhancement of habitats and biodiversity and whilst the Appellant’s intention to implement a woodland management plan is referenced in the Recommendation Report, the NPA fail to attribute any weight to this or to recognise what it might be able to contribute in terms of Biodiversity Enhancement”.

Flamingo Land fails to mention that it had tried to develop part of Drumkinnon Wood as a Service Area (Area 10) ([see here](#)) until forced to drop this. The significant point, however, is that Scottish Enterprise has continued to include Drumkinnon Woods, which the local community expressed an interest in managing, in its “Exclusivity Agreement” with Flamingo Land despite NO development being proposed there. Flamingo Land are now trying to use this to justify the development – the local community has a right to be very very angry with SE.

Flamingo Land’s second argument is that any issues about compensatory planting etc can and should be addressed at the stage detailed planning permission is considered. The argument in brief is that with the development phased over 4 stages, any “overdevelopment” at Phase 1 can be compensated by reducing the size of the development footprint and including more compensatory planting at Phase 2. Flamingo Land don’t explain the order of the various phases so there is a real risk they might leave the least profitable bit of the development – perhaps the more community oriented area at the Station Square or Woodbank House – till last and then use the need to plant more trees as an excuse for them not going ahead.

Flamingo Land and the statutory aims of the National Park

The LLTNPA in their Board Report link their objections on grounds of biodiversity and woodland loss to their statutory aim to conserve the natural and cultural heritage of the National Park. They then argued that because in the National Parks (Scotland) Act conservation comes before the other three statutory aims (promoting public enjoyment, sustainable development and wise use of services) where these conflict, their “conservation duty” is an additional reason for rejecting the application.

This shows just how weak the LLTNPA’s reasons for rejecting Flamingo Land’s applications were. Had they found that the impact of the development on landscape, recreation, amenity and traffic were unacceptable, as I have argued here, there would be NO alleged conflict between the four aims of the National Park and the development could have been decisively rejected. The reason the LLTNPA has not been able to do that is that prior to this year it has spent years supporting the Flamingo Land development despite it being contrary to ALL four aims of the National Park. The truth is that Flamingo Land’s various plans have never have been sustainable, have never been wise use of resources, have never promoted either conservation or public enjoyment of the area’s special qualities.

There is an opportunity for the Reporter appointed by the Scottish Government, Mr David Buylla, to rectify that fundamental failure of the LLTNPA as a National Park through the appeal process. He may be encouraged to do so if enough people make submissions about the flaws in both the LLTNPA’s and Flamingo Land’s arguments. Submissions can be made to Lomondbanksappeal@gov.scot and the appeal papers can be found [here](#). Currently the deadline for public responses is 7th February.

Category

1. Loch Lomond and Trossachs

Tags

1. climate change
2. conservation
3. flamingo land
4. Governance
5. landscape
6. LLTNPA
7. planning
8. Scottish Enterprise

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