

██████████  
**Senior Investigation Officer**  
**Environmental Standards Scotland**  
Ìrean Àrainneachdail na h-Alba

**ENVIRONMENTAL**  
**Standards Scotland**  
Ìrean Àrainneachdail na h-Alba

Via email: ██████████

30 August 2022

Dear ██████████,

I would like to thank you for submitting your representation to ESS. After our review, I can confirm that we cannot investigate the concerns you have raised, as the primary complaint is in relation to a specific planning case. As discussed below, intervention in such cases is not within ESS' powers.

I note that there may be failings in Highland Council permitting this development (21/01960/FUL) on the North Inverness Lochs SPA without undertaking appropriate assessments, and by not including necessary conditions when granting planning permission. However, ESS is unable to overturn individual planning decisions. As I mentioned in my email dated 02 August 2022, ESS may not take action on a failure to comply with environmental law arising out of any decision taken by a public authority in the exercise of its regulatory functions in relation to a particular case (per Section 32(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021). This is to prevent overlap with other existing appeal and complaint bodies which can handle concerns relating to individual cases, e.g. Planning and Environmental Appeals Department and the Scottish Public Services Ombudsman.

Your representation included concerns over wider issues with NatureScot and Highland Council's actions, which we reviewed to determine if these may relate to a systemic failure of these organisations to comply with environmental law, or in the way environmental law has been implemented or applied. We note the following:

- In review of the additional planning applications you have referenced within and adjacent to the SPA (07/00335/FULIN and 22/00674/FUL, respectively), I have not found sufficient evidence of a failure to consider cumulative impact assessments, or of systemic erosion of this SPA as:
  - The proposed development of 07/00335/FULIN was decided in 2007 and per the decision notice, the permission was granted subject to the condition that the development is begun within five years of approval. If that development is

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not yet constructed as you indicated, then it is no longer a permitted development. Therefore it would require new planning permission before any development and as such does not need consideration in cumulative impact assessments.

- The approval of 22/00674/FUL adjacent to the SPA included a consultation response from NatureScot, who deemed the proposal unlikely to affect the SPA, and advised that an appropriate assessment would not be required due to the distance. The development appears over 400m from the nearest loch, which exceeds the average distance of Slavonian Grebe disturbance by houses you have quoted from Ruddock & Whitfield (2007) in your representation.
- In addition to the above two planning applications you referenced in your representation, ESS has also identified and reviewed additional planning applications within the SPA, including:
  - 12/00290/PIP – for holiday cottages, which was withdrawn and therefore not permitted.
  - 06/00576/FULIN – for holiday cottages. This was permitted, but there are no documents on the planning portal to review (possibly due to the age of the application).
  - 14/01127/FUL & 20/02242/FUL – these are for minor extensions and additions to existing dwellings and therefore the absence of appropriate assessments does not appear to be a significant issue.
- Your concerns over NatureScot failing to refer to their own published guidance (Ruddock & Whitfield 2007) on Slavonian Grebe disturbance distance may relate to an individual failing for this case (21/01960/FUL), but does not appear evident of a trend in this SPA – the consultation response from SNH (now known as NatureScot) in planning application 12/03277/FUL (a development in the vicinity of this SPA) does quote this guidance.
- I have enquired with RSPB whether they have identified any trends of Highland Council, or any other Scottish councils, permitting similar developments within protected sites without appropriate assessments. While they indicated that such failings can occur to their knowledge, they did not hold records on any series of similar failures. They indicated their plans to raise their concerns to NatureScot and Highland Council in relation to your specific case.

Following the points above, we do not consider there to be sufficient evidence of broader issues to allow us to investigate the public authorities involved.

I have written to Highland Council to make them aware that ESS received the representation. In this letter, I indicated that ESS will be prepared to consider the matter for investigation if we receive further intelligence or representations regarding the council permitting developments in protected sites without appropriate Habitats Regulations Appraisal (HRA).

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In light of the above, I have decided that no further action should be taken by ESS. While I appreciate you may be disappointed we are not able to intervene in this instance, I can confirm that we will use the information you have provided us in our wider monitoring role.

Yours sincerely,



Senior Investigation Officer

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