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## Appeal Decision Notice

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Decision by Alison Kirkwood, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2268
- Site address: Land 50 metres north west of Caberfeidh, Braes Of Ullapool, Ullapool, IV26 2XJ
- Appeal by Ossian Developments Limited against the decision by Highland Council
- Application for planning permission 21/04108/FUL dated 26 August 2021 refused by notice dated 27 April 2022
- The development proposed: Siting of nine self catering pods and two staff accommodation buildings
- Date of site visit by Reporter: 9 August 2022

Date of appeal decision: 07 November 2022

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### Decision

I dismiss the appeal and refuse planning permission.

### Preliminary

Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 includes permanent camp sites and caravan sites, where the area of development exceeds one hectare. In this instance, the appeal site extends to around two hectares. However, as the “area of development” would be under one hectare, I agree with the council that the proposal is not EIA development. I do not consider that the proposal is a holiday village, where screening would be required for development of over 0.5 hectares.

### Reasoning

1. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the Highland wide Local Development Plan 2012 (HwLDP) and the West Highlands and Islands Local Development Plan 2019 (WestPlan), and their associated Supplementary Guidance.
2. The HwLDP is more than five years old. Paragraph 33 in Scottish Planning Policy 2014 states that where a development plan is more than five years old, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration.
3. Having regard to the provisions of the development plan, the main issues in this appeal are:
  - The principle of the proposed use

- Landscape and visual impact
- Transport and accessibility
- Drainage and flooding
- Trees and woodland

#### The principle of the proposed use.

4. The site lies to the north west of Braes of Ullapool, an area of around 67 mainly residential properties, with a single access point onto the A835 trunk road. The site occupies an elevated position beyond the north western end of the U5065 Braes public road, which winds upwards from the A835. The site is currently occupied by two blocks of woodland, an area of rocky open ground and a section of the Ullapool Hill core path network.
5. The proposal would provide tourist accommodation, in the form of nine self-catering pods, each with a decking area and hot tub, on the southern part of the site. Two staff accommodation units and 18 car parking spaces are proposed on the northern part of the site. A total of 1.59 hectares of existing woodland would be removed, with 0.7 hectares of restocking on the site, and additional compensatory planting provided elsewhere.
6. Braes of Ullapool is located to the south east of the main town and is included within the Settlement Development Area as shown in the WestPlan. However, the appeal site itself lies beyond the settlement boundary and within the wider countryside policy area.
7. HwLDP policy 44 (Tourist Accommodation) supports tourist accommodation in the countryside where a demand exists for the type of accommodation proposed and it can be achieved without adversely affecting landscape character or natural, built and cultural heritage features.
8. The appellant has submitted a Visit Scotland factsheet (dated 2019) which indicates a rise in demand for overnight accommodation in the Highlands. It also points out that there is increasing demand for self-catering accommodation due to the popularity of the North Coast 500 route, which passes along the A835 road to Ullapool.
9. The preamble to HwLDP policy 44 states that if the council wishes to support proposals for increasing tourism development throughout Highland, then it will need places for tourists to stay. It also refers to self catering accommodation as being one of the fastest growing sectors.
10. I consider that the appellant has demonstrated that there is a demand in the Ullapool area for the type of accommodation proposed. Subject to assessment against the remaining criteria in HwLDP policy 44 and other relevant policies, I consider that tourist accommodation in this location would accord in principle with the development plan. I address other relevant policy considerations in the following sections.

#### Landscape and Visual Impact

11. HwLDP policy 36 (Development in the Wider Countryside) requires me to consider whether the proposal is acceptable in terms of siting and design, is sympathetic to existing patterns of development and is compatible with landscape character and capacity. HwLDP 29 (Design Quality and Place-Making) states that new development should be designed to make a positive contribution to the architectural and visual quality of the place

in which it is located and that proposals should have regard to the historic pattern of development and landscape in the locality.

12. In this regard, I consider the placemaking priorities for Ullapool set out on page 205 of the WestPlan, to be relevant. These state that:

- new development must not detract from the quality of the setting of Ullapool, including from public views from the path network and the shore; and
- new development on more visible sites to the south must be sensitively sited and integrate existing woodland.

13. In refusing the application, the council stated that the loss of trees would have a significant detrimental impact on the visual and residential amenity of the Braes' residents. Representations raised concerns that the proposal would have an adverse impact on the amenity of the core path and on views from the shore area of Ullapool, in particular.

#### *Amenity of existing residents*

14. The appellant points out that the site is located at the top of the Braes, some way to the north west of the closest house. The majority of houses are orientated to overlook the bay to the southwest and do not have a direct view of the wooded areas to the north.

15. Given the topography of the Braes, and the position and orientation of existing houses in relation to the site, I agree with the appellant that the development would not have a direct impact on the amenity of existing residents.

#### *Views from the core path*

16. The development would sit within the slopes of the site, with the two staff accommodation units located on the upper level, and nine self-catering pods situated in two rows at a lower level. The existing core path, which forms part of the green network, runs between the upper and lower parts of the site.

17. The proposal would involve the removal of 1.2 hectares of planting on the upper level of the site. However, more than half of this area would be replanted, creating "keyholes" for the staff accommodation units, car park and access routes. I consider that the removal of the existing conifer crop from this part of the site would have an adverse impact on views from the core path, but only until the proposed replacement planting becomes established. This impact would therefore be short term and would only relate to a small section of the overall core path network between the Braes and Ullapool.

18. The nine self-catering pods would sit below the core path and be separated by a raised area of open ground and exposed rock. The visualisation provided by the appellant indicates that only the upper row of pods would be visible from the core path. Taking account of the scale, siting and design of the pods, I consider that development on the lower part of the site could be accommodated with minimal impact on the amenity of the core path.

#### *Views from the Shore area*

19. The hillside, within which the site and the Braes sits, is visible when looking in a south-easterly direction from Shore Street in Ullapool. I would describe the existing pattern of development in the Braes as semi-rural in nature, characterised by glimpses of individual houses within a wooded hillside setting. The site lies immediately to the west of a

telecommunications mast which is visible above the existing tree line. Whilst, the upper part of the site is not visible from Shore Street, the lower part can be seen.

20. The proposed landscaping plan shows the removal of 0.39 hectares of trees from the lower part of the site, with pockets of restocking to be provided between some of the pods. In order to understand how visible the development would be in views from the shore, I asked the appellant to provide additional visualisations.

21. The initial visualisation provided by the appellant indicated that only two of the pods would be visible in views from the shore area. However, the council pointed out that this image did not show the effect of the proposed tree removal. It considered that the pods would be more visible than suggested.

22. The appellant provided further information in the form of an additional visualisation and explanatory notes. From these, it is my understanding that two of the pods would be fully screened by existing tree planting which is to be retained, and two pods would remain visible in views from the shore area. The removal of the woodland block on the lower part of the site would mean that the other five pods would also be visible in public views from the shore area. However, I note that the proposed restocking is aimed at screening these pods and any adverse impacts may be short term.

23. The basic photomontages submitted by the appellant provide insufficient detail to allow me to properly assess how effective this screening would be. I note that no planting is proposed in front of the decking along the lower row of pods, presumably to allow views outwards. This would suggest that the pods would not be fully screened. There is therefore a risk that pods would be seen in views from the shore area, including at night when lights may be visible. Whilst each pod would be small scale and constructed in natural materials, the cumulative effect of these structures positioned close together in a row across the hillside would not be consistent with the existing pattern of development in the Braes.

24. I consider that the development would potentially be prominent in views from the shore area and could detract from the quality of the setting of Ullapool. Insufficient evidence has been provided to demonstrate otherwise. I conclude that the proposal would not accord with HwLDP policies 29, 36 and 44 in terms of landscape and visual impact.

### Transport and Access

25. HwLDP policy 56 (Travel) requires proposals to be designed for the safety of all potential users and be well served by the most sustainable forms of travel available in the locality from the outset. HwLDP policy 28 (Sustainable Design) also requires proposals to be assessed on the extent to which they are accessible by public transport, cycling and walking, as well as car. I find that the proposal raises three key issues in relation to transport and access:

- Impact on the junction between the A835 road and the U5065 Braes road.
- Road and pedestrian safety along the Braes road.
- Accessibility by sustainable transport modes.

### *The A835 junction*

26. The proposal would be accessed from the single-track U5065 Braes road, which joins the A835 trunk road to the south of Ullapool. The council has indicated that the visibility splays at the junction onto the trunk road are substandard, and representations

have raised concerns about the road safety implications of additional traffic using this junction.

27. Transport Scotland has not objected to the proposal on the grounds that this is an existing junction onto the trunk road network, which has no recorded personal injury incidents. It does not consider that the development would have a material impact on the safe and efficient operation of the junction, particularly when considering the number of existing houses in Braes of Ullapool.

28. Local residents are understandably concerned about the increased use of a junction where visibility onto the trunk road is below normal standards. However, this junction does not provide direct access to the site and as such does not form part of the proposal. What I need to consider is whether the additional traffic arising from the proposal would have an adverse impact on the capacity and operation of the junction. The fact that users of the site may not be familiar with the junction is not a relevant planning consideration. Even if it was, I note that there are existing properties in the Braes being used for tourist accommodation purposes and find that other visitors to the Braes may also be unfamiliar with the junction.

29. Lochbroom Community Council and others have referred to the Wester Ross Local Plan 2006 which states that “no further potential exists for development at Braes due to trunk road access constraints”. The 2006 plan no longer forms part of the development plan. I have no information before me on the reasons why this statement is not included in the current local development plans. However, the consultation response from Transport Scotland indicates that it does not consider there to be a trunk road access constraint in relation to this proposal.

30. The appellant’s transport assessment anticipates a total of 21 two-way vehicular movements a day during the week, and less at the weekend. Given that the A835 junction already serves 67 properties, the development is likely to result in only a minor increase in vehicle movements onto the A835. Furthermore, the majority of vehicle trips arising from the development would be outwith peak periods. On this basis, I conclude that the proposal would have a negligible impact on the capacity and operation of the A835 junction, and that this would not justify the refusal of planning permission.

#### *The Braes road*

31. The transport assessment also considers the suitability of the Braes road to provide access to the development. It notes that a combination of formal, unsigned, passing places and wider sections of carriageway at property driveways are located at regular intervals on the narrower sections of the road. Pedestrian facilities are either formally provided by footways, or by using verges.

32. The transport assessment recognises the limitations of the existing road to provide safe vehicle and pedestrian access to the site. To address this, the appellant proposes mitigation in the form of two additional passing places on the upper section of the Braes road and the provision of twelve passing place signs along the route. This mitigation was supported by council officers. However, the committee indicated that the proposal would exacerbate existing road conditions to the detriment of road and pedestrian safety, and it did not consider that the proposed mitigation was deliverable or sufficient.

33. The upper section of the Braes road is narrow, with a blind corner next to the property at Caberfeidh and currently provides access to only five residential properties. The proposal would result in a marked increase in traffic levels on this section of road. Within

this context, I consider that the two proposed additional passing places would be essential in the interests of road safety. However, I note that the land required to provide this proposed mitigation is not in the ownership of the appellant.

34. The upper section of road is used by residents of the Braes to access the core path network and in the absence of any footways, pedestrians would need to rely on grass verges to avoid vehicles. I observed that these are narrow and overgrown in places. I consider that the additional levels of vehicular traffic arising from the development would have an adverse impact on pedestrian safety on the upper section of the road and the provision of additional passing places would not fully address this impact.

35. Whilst pedestrian safety would also be a concern on the other narrow sections of the Braes road, where there are a lack of footways, the impact of the proposal would be less evident. This is because these parts of the road currently serve more properties and the increase in vehicle movements would be proportionally smaller.

36. The transport assessment acknowledges that in order to travel safely along the Braes road, vehicles would need to use wider parts of the carriageway next to private driveways as informal passing places. I observed on my site inspection, that some of these locations would require drivers to stray off the carriageway onto the driveway. I consider that this may impact on the amenity of property owners and should they wish to prevent vehicles using their private driveways for passing purposes, they would be entitled to do so.

37. I conclude that in its current condition the Braes road would not provide safe vehicular and pedestrian access to and from the development. The proposed mitigation would help address impact on road and pedestrian safety. However, based on the evidence before me, I am not convinced that these measures would be deliverable. Furthermore, the proposed mitigation would not address impact on pedestrian safety on the upper section of the Braes road.

#### *Sustainable transport modes*

38. I consider that the nature and geometry of the Braes road would limit the number of guests that would choose to walk or cycle along this route. I note that there is no bus stop within a kilometre of the site and no obvious cycle routes. The appellant indicates that the core path, which runs through the site, would provide easy access for guests to explore the surrounding area and walk to local facilities in Ullapool. However, representations point out that the core path is uneven and rocky, and an unsuitable route for inexperienced walkers. Whilst I recognise the recreational benefits of the core path network, I do not consider that it would provide a reasonable non-car alternative for those seeking access to local facilities in Ullapool.

39. For the above reasons, and notwithstanding the actions included in the appellant's travel plan which seek to increase walking and cycling, I consider it likely that the proposal would be accessed predominantly by private car. Whilst I recognise that reliance on the private car can be expected to continue in remote parts of the Highlands, one of the benefits of the proposal would be its proximity to Ullapool. However, the site is not in a location where access to the town by walking, cycling or public transport would be a realistic prospect.

40. I conclude that, in terms of impact on road and pedestrian safety and accessibility by sustainable modes of transport, the proposal would not accord with HwLDP policies 28 and 56.

### Drainage and Flooding matters

41. The council's flood risk team has reviewed the appellant's drainage impact assessment and additional supporting information and is satisfied that matters relating to surface and foul water drainage infrastructure and the treatment of discharge from the hot tubs can be addressed through a condition. This would require the submission and approval of a finalised drainage strategy, prior to the commencement of development.
42. The proposed block plan includes three drainage discharge routes within the site boundary; two for surface water which would ultimately discharge to Allt a Ghamhainn to the north west, and the third for treated sewage which would ultimately discharge to Allt a Choire to the east. A separate soakaway system is proposed for discharge from the hot tubs. The proposed development would require a private sewerage system and would therefore have no impact on the capacity of the public network at the Braes. Concerns have been raised in representations that the above watercourses are often dry and therefore suitable dilution of the discharge could not be achieved. In order to address this matter, I sought further information from the appellant and the council.
43. HwLDP policy 28 (Sustainable Design) supports developments which will promote and enhance the environmental wellbeing of the people of Highland. Relevant considerations include the impact of pollution and discharges on habitats and freshwater systems.
44. Planning Advice Note 51: Planning, Environmental Protection and Regulation offers guidance on the role of the planning system in relation to specific environmental protection regimes which are designed to safeguard the natural and built environment. It points out that the granting of planning permission does not remove the need to seek other statutory consents, nor does it imply that these consents will be forthcoming. As the proposal would involve discharge to watercourses, a controlled activities regulations (CAR) licence from the Scottish Environment Protection Agency (SEPA) would be required. The appellant has already been in correspondence with SEPA regarding this matter.
45. An email from SEPA dated 29 July 2021 indicates that it also has concerns about the flow rate and dilution ratio at the point of discharge. However, SEPA states that it may be willing to issue a discharge licence, subject to identified criteria being met, including a site visit to confirm an adequate flow rate after five days of no rain.
46. The appellant has not demonstrated that the proposal can meet the criteria identified by SEPA. However, it has suggested that where ground conditions do not allow for a traditional soakaway to disperse effluent fully on a year-round basis, a partial soakaway can be installed as a "buffer" device that should help protect watercourses from pollutants during extended periods of dry weather. It is not known whether this suggested solution would be acceptable to SEPA.
47. Uncertainty therefore remains regarding the suitability of the identified watercourse to receive treated sewage. I am therefore unable to reach a conclusion on whether the proposal would accord with HwLDP policy 28 (Sustainable Design), in terms of its impact on the water environment. Whilst not ideal, I agree with the council that, if I am minded to grant planning permission, I could attach a condition requiring the submission of further drainage details. In terms of discharge to watercourses, the appellant would also need to meet the requirements of the environmental licencing process.

48. Concerns have been raised regarding the risk of surface water flooding following the felling of trees. However, the site is not located in an area susceptible to flooding and I consider that the proposal would accord with HwLDP policy 64 (Flood Risk).

### Trees and Woodland

49. HwLDP policy 52 (Principle of Development in Woodland) maintains a strong presumption in favour of protecting woodland resources. It states that development proposals will only be supported where they offer clear and significant public benefit and where this involves woodland removal, compensatory planting will usually be required. To address matters covered in this policy, the appellant has submitted a trees, woodland and development report.

50. The proposal would involve the felling of 1.59 hectares of existing planting and restocking of 0.7 hectares within the site boundary. The remaining compensatory planting requirement of 0.89 hectares is to be provided off site at Woodlands Estate, Ballachulish. The appellant indicates that the compensatory planting on the site and elsewhere would bring landscape and biodiversity benefits by replacing a conifer crop with a mix of native broadleaf species. Subject to appropriate conditions, the council's forestry officer is satisfied that the proposal would accord with HwLDP policy 52.

51. The site is not identified as being of particular importance in terms of protected species and habitats or environmental features. I agree that the restocking and compensatory planting could result in landscape and biodiversity benefits and recognise the economic benefits that tourist accommodation in this location would bring. However, given the nature of the proposal and the concerns raised in objections, I do not consider that the development would offer "clear and significant public benefit". I conclude that the proposal would not accord with HwLDP policy 52.

### Development plan conclusions

52. Whilst the principle of tourist accommodation would be supported by the development plan, the proposal would be contrary to relevant policies on landscape and visual impact and transport and accessibility matters. The benefits of the proposal would not justify the removal of trees and matters relating to impact on the water environment remain unresolved. I conclude that the proposal would not accord overall with the development plan.

### Other material considerations

53. Scottish Planning Policy introduces a presumption in favour of development that contributes to sustainable development. Where the development plan is more than five years old, as is the case with the Highland-wide Local Development Plan, this "presumption in favour" is a significant material consideration.

54. Paragraph 33 of Scottish Planning Policy requires me to consider whether any adverse impacts of the development would "significantly and demonstrably" outweigh the benefits of the proposal. Paragraph 29 sets out a list of sustainable development principles to guide this assessment. I sought further information from the appellant and the council on this matter.

55. The council recognises the benefits of the proposal in terms of contributing to local employment and spending and delivering leisure development and improvements to a



section of the core path. However, it highlights disadvantages in relation to roads and access issues, and impact on the amenity and safety of existing residents

56. The appellant indicates that the proposal would contribute towards sustainable development and represents the “right development in the right place”. It considers that the proposal accords with all relevant principles in paragraph 29 of Scottish Planning Policy.

57. I find that the proposal would bring benefits in terms of job creation and supporting the local economy. The replacement of the existing conifers with native broadleaf planting could also bring landscape and biodiversity benefits and the proximity of the site to the core path network would provide opportunities for social interaction and physical activity.

58. However, the proposal would not be readily accessible by sustainable modes of transport, and it has not been possible to fully assess the effects of development on the water environment. In addition, I have concerns regarding the landscape and visual impact of the development.

59. I consider on balance that the adverse impacts of the development would “significantly and demonstrably” outweigh its benefits. The proposal would not achieve the right development in the right place and would therefore not be supported by Scottish Planning Policy.

### Conclusions

60. I conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

*Alison Kirkwood*

Reporter