

Planning and Environmental Appeals Division



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Mr M Harvey
Highland Council
Sent By E-mail

Our ref: PPA-270-2295
Planning Authority ref:23/04610/FUL

25 July 2024

Dear Mr Harvey

**PLANNING PERMISSION APPEAL: LAND 55M NE OF WILLOWBANK THE SQUARE
BALMACARA IV40 8DP**

Please find attached a copy of the decision on this appeal.

The reporter's decision is final. However you may wish to know that individuals unhappy with the decision made by the reporter may have the right to appeal to the Court of Session, Parliament House, Parliament Square, Edinburgh, EH1 1RQ. An appeal **must** be made within six weeks of the date of the appeal decision. Please note though, that an appeal to the Court of Session can only be made on a point of law and it may be useful to seek professional advice before taking this course of action. For more information on challenging decisions made by DPEA please see <https://beta.gov.scot/publications/challenging-planning-decisions-guidance/>.

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I trust this information is clear. Please do not hesitate to contact me if you require any further information.

Yours sincerely

Audrey Devoy

AUDREY DEVOY
Case Officer
Planning And Environmental Appeals Division





Appeal Decision Notice

Decision by Andrew Fleming, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2295
- Site address: land 55m northeast of Willowbank, The Square, Balmacara, IV40 8DP
- Appeal by Mr Ruraidh Stewart against the decision by The Highland Council
- Application for planning permission 23/04610/FUL dated 25 September 2023 refused by notice dated 13 December 2023
- The development proposed: change of use of croft land to a caravan site with 7 stances for holiday use, associated roads, parking, drainage and water connections
- Date of site visit by Reporter: 12 March 2024

Date of appeal decision: 25 July 2024

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan covering the appeal site comprises National Planning Framework 4 (NPF4) adopted by the Scottish Ministers in February 2023, the Highland-wide Local Development Plan adopted in April 2012 and the West Highland and Islands Local Development Plan (WestPlan) adopted in September 2019. Having regard to the provisions of the development plan, the main issues in this appeal are: the principle of the proposed development at this location; residential amenity (individual and community); landscape character and visual impact; access and impact on the wider road network; the impact on soils and the impact on croft land.

Principle of the change of use

2. The proposal is for a change of use of croft land, used for grazing sheep, to a caravan site containing 7 stances for holiday/ recreational use. I observed during my site inspection that the site is predominantly given over to rough grassland, reflecting its crofting use, although tracks have been formed within the site which provide an indication of a potential site layout. According to the appellant, stances would be set on a concrete base and parking would be provided between the stands.

3. The appellant submitted a site layout plan with their application, providing an indication of where the 7 stances would be located within the site. The appellant also submitted a location plan which identifies the route of drainage and water connections to the public systems. The council considers that insufficient information has been provided in order to assess the proposal, subject of this appeal, most notably in relation to the design of the proposed caravans. Whilst I have some sympathy with the council in that regard, the

siting of a caravan is generally not regarded as operational development. It therefore follows that permission for the use of the appeal site for the siting of caravans would not specify any particular type of caravan. Illustrations (including elevations) of how caravans might appear on the site would not be necessary for the determination of this appeal for a change of use, particularly given that any caravan located at the site might be replaced with another without the need for permission.

4. In relation to tourism development, NPF4 advises that local development plan spatial strategies should identify suitable locations which reflect opportunities for tourism development by taking full account of the needs of communities, visitors, the industry and the environment. NPF4 policy 30 (a): 'Tourism' supports new tourist facilities or accommodation, including caravan and camping sites, in locations identified in the local development plan.

5. NPF4 policy 30 (b) identifies a set of criteria to be taken into account when proposals are put forward for tourism related development. These include: the contribution to the local economy; compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors; impacts on communities (e.g. hindering provision of homes and services for local people); opportunities for sustainable travel and appropriate management of parking and traffic generation and scope for sustaining public transport services particularly in rural areas; accessibility for disabled people; measures taken to minimise carbon emissions; and opportunities to provide access to the natural environment.

6. The Highland wide Local Development Plan policy 44: 'Tourist accommodation' provides general support for tourist accommodation proposals both within settlement boundaries and in the wider countryside. The policy emphasises that support is provided where it can be accommodated without adverse impacts on neighbouring uses and that within the wider countryside, it can be demonstrated that a demand exists for this type of accommodation and that it can be achieved without adversely impacting on landscape character as well as being consistent with other guidance on siting and design.

7. NPF4 policy 29: 'Rural development' supports new development which supports local employment and is considered suitable in terms of location, access, siting, design and environmental impact.

8. WestPlan does not identify a settlement boundary for Balmacara or for Reraig to the southeast. Instead, it identifies a series of 'Placemaking priorities' including: to locate development as close as possible to the core of each settlement and where adequate servicing can be achieved; to secure a mix of uses including... a tourist/ community facility most sensibly at the former caravan park at Balmacara and housing infill or croft based development elsewhere; to safeguard local natural heritage interests, particularly woodland that contribute to the setting of Balmacara and Reraig.

9. As acknowledged by the appellant and the council, the area around Balmacara is popular with tourists, being located close to the A87 road which is a major tourist route and also close to Skye. The development of a caravan site in this location would enable visitors to stay in the area for longer. Tourist attractions, cafes, restaurants and other businesses are likely to benefit as a result and this in turn would benefit the local economy. With regards to 'Placemaking priorities', the proposal is located relatively closely to the centre of the settlement, centred on 'the Square', with its commercial businesses. It would provide croft based development and would avoid impacting on the woodland that contributes to the setting of Balmacara. It would provide opportunities for visitors to access the countryside.

10. NPF 4 policy 30 (a) is clear that support will be offered to proposals for tourist accommodation in locations identified in local development plans. The inference being that there is no support for sites that are not identified in the respective local development plan. WestPlan does not identify the site for such use and the proposal does not therefore comply with NPF4 policy 30 (a). With regard to policy 30 (b), the proposal would most likely result in local economic benefit and provide opportunities for visitors to access the countryside. However, I must consider other issues including whether the proposal is compatible with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors. I turn to these issues below.

Residential amenity

11. According to policy 28: 'Sustainable design' of the Highland wide Local Development Plan, proposals will be assessed, amongst other things, on the extent to which they impact on individual and community residential amenity. The site is located on the western fringes of the settlement of Balmacara, immediately to the east of the appellant's property 'Willowbank'. The site slopes towards the eastern boundary beyond which is a burn which runs in a northwest-southeast direction. This burn is lined by mature trees and shrubs. The southern, southeast, southwest and western boundaries of the site are clearly demarcated by lines of (willow) planting which have become established and are significant in height. In contrast, the northern, northeastern and northwestern boundaries of the site are not defined by any planting or physical features. Beyond the watercourse, approximately 30 metres northeast of the site boundary, there are residential properties on Hamilton Road. Nos 16 and 17 Hamilton Road are directly opposite the site. To the north is the property known as 'Pheonix House Croft 7' and to the southeast is 'no 8 Hamilton Road'. Approximately 25 metres to the south of the site boundary there is a further residential property known as 'Garadh Measan Croft House 8'. Including for the appellant's own property 'Willowbank', there are therefore residential properties in proximity of the site to the north, east, south and west.

12. I observed during my site inspection that the southern and western boundaries of the site are well defined by mature willow planting and that this screens the site from views to the south. In contrast, I observed that there are significant gaps between the trees along the banks of the burn, to the east of the site, which allow clear views from within the site towards the residential properties on Hamilton Road (and vice versa). Occupiers of the site would be able to obtain clear views across the site towards these residential properties with an adverse impact on residential amenity as a result. Whilst there is no right to a private view from a residential property, I consider that given the sloping nature of the site to the east and the limited planting/ vegetation along the strip of land between the site boundary and the nearest residential properties, the properties to the east of the site would experience a reduction in visual amenity, looking directly onto the proposed caravans and associated parked vehicles.

13. Given the nature of the proposal, there would be various sizes of groups of people on the site and it could be expected that they would be outside for large periods of the day/ night. Given the recreational nature of the proposal, there would most likely be greater noise levels than when people are in their own homes. I appreciate that the appellant has advised that, as they live next to the site, they would ensure noise levels were kept to a satisfactory level. However, they would not be present all of the time and it would be difficult for them to monitor noise all of the time. There would most likely be times when they were not in their own home. There is also no guarantee that they would remain residing next to the site indefinitely. Despite their reassurance that noise would be limited, given the site's current use, given that there are residential properties surrounding the site and in close

proximity to the site, I consider that noise would be a particular issue adversely affecting local amenity.

14. Due to the nature of the proposal, there would be people arriving at and leaving the site at various times of the day and night. There would be noise and disturbance associated with vehicles entering and leaving the site, caravans being pitched and due to people being on site and being outside. Given that this is a proposal for a change of use, it is not possible to be certain what the precise number of people would be accommodated on the site at any one time. That said, I have no doubt the proposal would result in noise and disturbance to existing surrounding residential properties when currently such noise and disturbance does not exist. The site is currently a grass field and therefore such activity including car lights and the introduction of site lighting would cause a degree of light pollution to an area currently with limited light pollution.

15. I therefore consider that the proposal is likely to have an adverse impact on individual and community residential amenity, particularly on those local residents in proximity to the site.

Landscape character and visual impact

16. According to policy 28: 'Sustainable design' of the Highland wide Local Development Plan, proposals will be assessed, amongst other things, on the extent to which they impact on resources including landscape and scenery. Policy 36 of that plan advises that proposals will be assessed for the extent to which they, amongst other things, are acceptable in terms of siting and design; are sympathetic to existing patterns of development in the area; and are compatible with landscape character and capacity.

17. The site is hidden from views to the south due to topography and existing vegetation. I therefore consider that the proposal would have no impact on the setting of the settlement when viewed from the south. As referred to above, the site has limited screening along its northern and eastern boundaries and views are possible into and across the site from the residential properties to the east.

18. I also observed during my site inspection that views into the site are possible from the minor road to the north of the main settlement when travelling southwards. Whilst this minor road is not heavily trafficked, it does provide panoramic views of the settlement and the surrounding landscape as well as views of Skye, beyond.

19. From the north, the site is seen in the context of various crofts and associated houses, broad leaved woodland and conifer plantations with open areas of heather grassland. The housing is predominantly characterised by dark coloured pitched roofs and white rendered elevations and appears informally sited in the landscape. The site is in the foreground of these views and currently contributes to the rural setting of the settlement. The proposal, involving 7 stances in a denser, more regimented layout, would affect this setting, altering its rural character.

Access and road infrastructure

20. Policy 56: 'Travel' of the Highland wide Local Development Plan is concerned with the on- and off-site transport implications of proposals.

21. The site is served by an existing rough track that is a continuation of the private driveway that serves the appellant's house, 'Willowbank'. The private driveway joins the U4891 road to the south. Based on my site inspection, I am satisfied that sufficient

visibility splays can be achieved to the east, towards the centre of the village and also to the southwest, towards the junction with the A87 (currently 90 metres in both directions). There is a retaining wall on either side of the road carriageway immediately to the southwest of the private driveway where a burn runs below the road. These structures represent a potential pinch point for large vehicles exiting the site and turning southwest heading towards the A87. However, I am conscious that large agricultural vehicles access and egress the croft land from this section of road and therefore consider that it would be possible to accommodate visitors to the site with their cars and caravans/ larger vehicles.

22. The existing gates at the access point are agricultural gates which have been used for stock management purposes and according to the appellant would only be closed when transferring livestock between fields. These gates would not be closed during the operation of the site in order to ensure traffic access and egress. I note that these gates open inwardly (i.e. towards the site and away from the road) and do not obstruct vehicles leaving the roadway to access the site.

23. Balmacara is served by two access roads via a north and south junction with the A87. Given the size and nature of the settlement, these roads do not currently experience high traffic volumes. The road accessed via the junction to the south would direct visitors through 'the Square', the settlement centre, before reaching the entrance to the appeal site. Whilst it would not require visitors to the appeal site to use passing places, its alignment and profile would not make it particularly attractive to cars towing caravans or other larger vehicles. The other access road, via the junction to the north (the U4891), leads passed the appeal site access before reaching 'the Square' in the centre of the settlement. This is a single track road with passing places.

24. I observed during my site inspection that there are three passing places between the site entrance and the junction with the A87 to the south. I also observed that the single track road (including passing places) has recently been resurfaced. The parties acknowledge that, as a result of resurfacing works, there has been a reduction in the width of this single lane carriageway and also a reduction in the size of the passing places. As a result, the passing places currently do not meet the dimensional requirements of a standard passing place as identified in the council's 'Roads and transport guidelines for new development'. This would have implications for cars towing caravans which may result in vehicles extending out into the carriageway.

25. The proposal would generate additional traffic to that currently using this single track road. The road is used by walkers for recreational purposes and for accessing public transport services on the A87 road to the south. There is no street lighting and there are no designated pedestrian facilities along this route. I observed during my site inspection that pedestrians share the single lane carriageway with other traffic using this route to access the settlement. I am satisfied that the existing carriageway width and sizes of the passing places do not lend themselves well to accommodating future increases in traffic as a result of the appeal proposal or to the types of vehicles that might use the road to access the appeal site (caravans being towed by cars or larger vehicles).

26. Given that the recent road resurfacing work was undertaken by the council, I have some sympathy with the appellant. However, I must consider the existing circumstances as part of my assessment of the proposal.

Soils

27. NPF4 policy 5: 'Soils' seeks to protect carbon-rich soils and peatland. Policy 55: 'Peat and soils' of the Highland wide Local Development Plan requires that development

proposals demonstrate how they have avoided unnecessary disturbance, degradation or erosion of peat and soils. The council concluded in its report of handling that there was no significant evidence of peat within the site. Even allowing for the presence of peat, NPF4 policy 5 part (c) supports development on peatland where it is small-scale development which would support the operations of a croft. In this regard, I consider that the proposal accords with NPF4 policy 5 part (c). Similarly, the proposal would not be incompatible with the thrust of policy 55 of the Highland-wide Local Development Plan.

Impact on croft land

28. Policy 47: 'Safeguarding inbye/ apportioned croftland' of the Highland wide Local Development Plan sets out that the council expects development proposals to minimise the loss of in-bye/ apportioned croft land. The policy seeks that where possible, proposals should avoid siting on the better part of the croft in terms of its agricultural value and avoiding impeding use of the remaining croft land by virtue of its location. The proposed use of the land is recognised by the Crofting Commission as "another purposeful use" of a croft and as such the proposed use would not result in the loss of apportioned croft land. The Crofting Commission, in its consultation response on this proposal, advised that "...the siting of any proposed development should not restrict proper access to all other areas of the croft."

29. The appeal site is part of a larger croft which also extends to the north and west of the appellant's property 'Willowbank', and I observed during my site inspection that access to the wider area would be maintained via gates to the west of the existing house. However, I also observed during my site inspection that there is a post and wire fence in place along the field boundary to the north of the appeal site boundary. It is not clear, based on this observation and the material before me, how the remaining parts of this field (which includes the appeal site) would be maintained as part of the croft, going forward. Given that there is a fence along this northern boundary and given that the only other access to this field would be for use by caravans entering the appeal site, the northern part of this field would effectively be landlocked as a result. This would have implications for this area's use as part of the remaining croft land.

Development plan conclusions

30. NPF 4 policy 30 (a) is clear that support will be offered to proposals for tourist accommodation in locations identified in local development plans, the inference being that there is no support for sites that are not identified in the respective local development plan. WestPlan does not identify the site for such use and the proposal does not therefore comply with NPF4 policy 30 (a). Whilst the proposal would most likely result in local economic benefit and provide opportunities for visitors to access the countryside, I do not consider that the proposal is compatible with the surrounding area. I consider that the proposal is likely to have an adverse impact on individual and community residential amenity, particularly on those local residents in proximity to the site. I also consider that the proposal would adversely impact the landscape character of the area. I therefore consider that the proposal does not accord with NPF4 policy 30 part (b) (ii) and policy 28: 'Sustainable design', policy 36: 'Development in the wider countryside' or policy 44: 'Tourist accommodation' of the Highland wide Local Development Plan. I have referred above to the impact of the proposal on croft land and consider that the proposal does not fully accord with policy 47: 'Safeguarding inbye/apportioned croftland' as a result. Given my findings above regarding the road network and associated passing places, I consider that the proposal does not incorporate appropriate mitigation to address off site deficiencies. These would be exacerbated by the appeal proposal and it would not accord with policy 56: 'Travel' of the Highland wide Local Development Plan as a result.

Other matters

31. Representations made on the application, now subject of this appeal, raised several issues including: impacts on residential amenity due to noise, disturbance and light pollution; the loss of croft land around the settlement; the impact of additional traffic using a single track road and implications for pedestrian safety; the impact on the local built environment and landscape and the impact on water and drainage services. I have addressed above, those matters which are relevant to the consideration of the proposed change of use of the site.

Conclusion

32. I therefore conclude, for the reasons set out above, that the proposal does not accord overall with the relevant provisions of the development plan and there are no material considerations which would still justify granting planning permission. I have considered all other matters raised but there are none which would lead me to alter my conclusion.

Andrew Fleming

Reporter