

Agenda Item	8.3
Report No	PLS 036/17

HIGHLAND COUNCIL

Committee: South Planning Applications Committee

Date: 20 June 2017

Report Title: 17/01697/FUL: Mr Donald Donnelly and Mr & Mrs Chris Donnelly
Land At Croft 104 And 105 70M North East Of Tigh A Chladaich
Glenmallie Road, Caol.

Report By: Area Planning Manager – South/Major Developments

Purpose/Executive Summary

Description: Amended access to three approved house plots (including amendment to condition 1 of planning permissions 11/04288/FUL, 15/02479/FUL and 15/03547/FUL).

Ward: Ward 11 Caol and Mallaig

Development category: Local Development

Reason referred to Committee: Member Referral

All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **REFUSE** planning permission as set out in section 11 of the report.

1 PROPOSED DEVELOPMENT

- 1.1 The application seeks to provide a revised access to three approved house plots from an existing field access located on Kilmallie Road. This is to provide an alternative arrangement to the more direct access already approved via Glenmallie Road / Alexander Square.
- 1.2 No pre application consultation has been undertaken with this application. There is however a history of discussions with the applicant covering a range of earlier submissions.
- 1.3 The housing development has already been assessed as satisfactory, although there were issues with regard to coastal flooding levels.
- 1.4 The applicant has submitted a case in support of the application based on ransom value claims on land required to secure the initially approved access arrangements.

2. SITE DESCRIPTION

- 2.1 The site is in agricultural / crofting use as well as being partly developed for three residential units. The application falls entirely within a single croft holding owned by one of the applicants.
- 2.2 The croft lies within a flood risk area (tidal flooding). Measures for flood defences to the south west are in preparation by the Council (Ref 15/00667/SCRE). The scheme will be promoted under the Flood Risk Management ('FRM') Act 2009. The houses granted planning permission previously recognised the land was to be raised above the expected 1:200 year flood risk level. This set down the requirement of a development platform level of 5.1 m AOD and the minimum finished floor level of 5.6m AOD.

3. PLANNING HISTORY

- 3.1 11.11.2016 - Amended access to three approved house plots (including amendment to condition 1 of planning permissions 11/04288/FUL, 15/02479/FUL and 15/03547/FUL) withdrawn.
17.11.2015 - Erection of house (amended design from extant planning permission 11/04288/FUL) granted planning permission 15/03547/FUL.
09.10.2015 - Erection of house (amended design) granted permission 15/03506/FUL.
18.08.2015 - Erection of house granted permission 15/02479/FUL.
27.02.2015 - Formation of new access to existing agricultural shed granted planning permission 27.02.2015.
17.02.2012 - Erection of 2 houses and formation of shared access granted planning permission 11/04288/FUL.
27.09.2010 - Erection of four houses refused planning permission 10/01997/PIP.

4. PUBLIC PARTICIPATION

4.1 Advertised : N/A

Representation deadline :

Timeous representations : 1 representation in support

Late representations : None

4.2 Material considerations raised are summarised as follows:

- Development could still allow development of the link road.

5. CONSULTATIONS

5.1 **THC - Development Plans Team** objects to the application. Development that will be prejudicial to any feasible alignment and junction for the proposed Blar Mor to Caol Link Road as set out in the West Highlands and Islands Local Plan.

5.2 **THC - Transport Planning Team** objects to the application. The revised access arrangements are prejudicial to any practicable routeing and junction arrangement for the Caol Link Road at this location.

6. DEVELOPMENT PLAN

The following policies are relevant to the assessment of the application

Highland-Wide Local Development Plan 2012

6.1	Policy 28	Sustainable design.
	Policy 29	Design quality & place-making.
	Policy 34	Settlement development areas.
	Policy 47	Safeguarding In-bye /Apportioned Croft land.
	Policy 49	Flood Risk
	Policy 61	Landscape
	Policy 74	Green Networks
	Policy 75	Open Space.

West Highlands and Islands Local Plan (as continued in force)

6.2 Caol Link Road as generally referenced within allocations and Developer Contributions – specifically H2 / Caol Lochyside.

7. OTHER MATERIAL CONSIDERATIONS

West Highlands and Islands Local Development Plan (Proposed Plan) (5 May 2017)

- 7.1
- Table 4 Fort William Congestion including relief of A830 and A82 – specifically the proposed Road Safeguard (Caol Link Road (Linking A82 to A830)) set out within Chapter 1 Vision and Strategy (and the supporting Transport Background Paper).
 - Green Network.

Highland Council Supplementary Planning Policy Guidance

- 7.2
- Access to Single Houses and Small Housing Developments (May 2011)
 - Developer Contributions (March 2013)
 - Flood Risk & Drainage Impact Assessment (Jan 2013)
 - Green Networks (Jan 2013)
 - Open Space in New Residential Developments (Jan 2013)
 - Physical Constraints (March 2013)
 - Public Art Strategy (March 2013)
 - Sustainable Design Guide (Jan 2013)

Scottish Government Planning Policy and Guidance (2014)

- 7.3
- Sustainable Development
 - Placemaking

8. PLANNING APPRAISAL

- 8.1
- Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

- 8.2
- This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

- 8.3
- The key considerations in this case are:
- a) Compliance with the Development Plan
 - b) Emerging Local Development Plan
 - c) Access
 - d) Planning History / Master planning
 - e) Flooding
 - f) Green Corridor / Network

g) Section 75 legal agreement

Development Plan

- 8.3 The application site falls within the Settlement Development Area of Fort William and in particular the community of Caol. The Council has a supportive policy for development in such areas as set out in Policy 34 of the HwLDP noted above – "if they meet the requirements of Policy 28 Sustainable Design and all other relevant policies. Proposals are to be judged on their compatibility with the existing pattern of development and landscape character, how they conform with existing and approved adjacent land uses, and the effect on any natural, built and cultural heritage feature (Policy 57), the Proposals Map and background maps within relevant (area) local development plans. Developments judged to be significantly detrimental in terms of the above criteria will not be supported unless there are clear material considerations which would justify permission being granted".
- 8.4 Taking the above policy into account particular interests for this application include:
- Council's ambitions for the Caol Link Road for which a finalised road design is awaited.
 - The Council's Flood Defence (coastal) programme.
 - Locally important croft land - within the context of existing pattern of development / green networks.
 - Existing and approved land uses / scale of development.
- 8.5 If the Council is satisfied on these matters the application should be supported. However it is clear from the consultations undertaken with the Development Plan Policy Team and Transport Planning that the application is in conflict with the adopted West Highlands and Islands Local Development Plan. Both parties have raised objection to the application. The conflict arises from the Council's ambitions for the Caol Link road / land reservation, rather than the Council's flood scheme.

West Highlands and Islands Local Development Plan (proposed West Plan) (5 May 2017)

- 8.6 The application is in conflict with the emerging replacement local development plan and in particular the Council's ambitions for the Caol Link Road. The Council's Development Plan team has advised: -
- *"the safeguarding of the corridor remains Highland Council policy. This decision was reaffirmed by the Lochaber Area Committee as recently as 18 January 2017. Members reiterated that they still see the Caol Link Road scheme as an essential component of traffic measures to resolve peak time congestion and allow further planned growth of the settlement and accordingly the continued safeguarding of the corridor as an essential to the Plan's growth strategy. Accordingly, the proposal would be contrary to this key component of the approved and emerging development plan.*
 - *The previous analysis of other relevant policies is still pertinent. It is not aware*

of any other policy considerations (such as a lack of other effective housing land) that would outweigh this factor and therefore, in conclusion, in policy terms, it would advise that the application should be resisted.”

- 8.7 Given the advanced state of the replacement Local Plan the intentions of the emerging plan can be given a degree of weight in the final decision made on this particular application. It is clear the application is in conflict with the emerging local development plan. This road-line is expected to be examined within later stages of the development plan process (Examination by DPEA/ Scottish Government).
- 8.8 It is noteworthy that the applicant had highlighted in its supporting statement that “given the improved economic prospects being advanced by the Liberty Group at the Fort William smelter there will be an increased need for additional housing land”. The Council’s Development Plan Team has rejected this statement. It highlights that the development plan has identified a significant land bank for the settlement for the foreseeable future.

Access

- 8.9 The need behind this application is recognised in full, given the stated difficulties (ransom value) of securing the land for the access to the approved housing units. The proposed solution as presented is not in itself an attractive option in terms of the best design and layout of residential development in this locality. However of principal concern is the Council’s Transport Planning Service objection to the application, given its conflict with the Caol Link road safeguard as presented in the Council’s adopted Local Plan and emerging replacement plan. To grant permission would increase the burdens upon the Council to overcome and thus deliver this long held transport ambition.

Planning History / Master planning

- 8.10 The history of planning applications on this small croft is slowly and progressively eroding the use and value of this holding. Planning permissions for housing have been approved taking into account land management, housing and economic needs of the owner as well as effective land use, design and layout considerations. The land ownership issues associated with the recent house plots (under construction) were fully recognised and understood at the time. It is not the role of the planning authority to resolve legal issues surrounding earlier development proposals, no matter how sympathetic one might be to the current situation.
- 8.11 The Council has always advocated a master-planning approach to development, rather than the piecemeal development that has emerged on this croft. It has been recognised by the Council that the Coal Link road will have a significant impact on the holding, but there is potential for further development on areas of land not required for the Caol Link road. The current application presents an indicative masterplan for residential development of the whole holding but it disregards the Caol Link Road safeguard. However, this is not a formal part of the application submission and therefore it cannot be relied upon. Its provisions must be set aside and cannot be given any weight in the final decision on the current access application. The details of the master plan have not been assessed within this application.

Flooding

- 8.12 Past discussions / applications on flooding have highlighted that these can be overcome by design and have also been taken into account in the Council's Coastal Flood Scheme.

Green Corridor / Network

- 8.13 The current application is not considered to significantly affect this matter, although any approval will continue to erode the capabilities of the croft to sustain a valued purpose.

Section 75 Legal Agreement

- 8.14 The applicant has offered that "if the Caol Link Road (CLR) is to remain allocated, or simply to enable its development to proceed whilst the future of the link road is determined, we offer a Section 75 Agreement that will ensure the CLR corridor is safeguarded because all affected parties will bindingly agree to an alternative access being provided when the CLR proceeds."
- 8.15 The Council sees no benefit in moving forward in this manner. Planning applications need to be considered fully and appropriately and where necessary use planning conditions to control relevant elements associated with the development. Section 75 agreements are very much a last resort, but also it is not seen as an appropriate vehicle for the current situation.

Other Considerations – not material

- 8.16 None

9. CONCLUSION

- 9.1 The Council has a history of assisting the particular circumstances of this crofter to live, work and invest in his small holding, whilst also retaining the transport ambitions of the wider community.
- 9.2 At the current time the Council has a long established ambition to develop the Caol Link Road, which is highlighted within the adopted development plan and its replacement plan. Local Councillors have recently highlighted their sustained support for this project, and therefore it is not easy to set aside the road link safeguard during the consideration of this application.
- 9.3 All relevant matters have been taken into account when appraising this application. It is considered that the proposal conflicts with the policies contained within the Development Plan. There are no applicable material considerations that suggest the policies of the Development Plan be set aside.
- 9.4 It is recommended that the application be refused for the reasons set out below.

10. IMPLICATIONS

- 10.1 Resources: Potential impact on cost of Caol Link Road Project by Council / Trunk Road Authorities.
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change / Carbon Clever: Not applicable.
- 10.5 Risk: Not applicable.
- 10.6 Gaelic: Not applicable.

11. RECOMMENDATION

11.1 Action required before decision issued

Notification to Scottish Ministers	N
Referral to Ward Members	N
Notification to Historic Scotland	N
Conclusion of Section 75 Agreement	N
Revocation of previous permission	N

11.2 **Subject to the above**, it is recommended that planning permission be **REFUSED** for the following reasons:

1. The proposed development conflicts with the West Highland and Islands Local Plan (as continued in force following adoption of the HwLDP 2012), (WHILP). The plan highlights the safeguarded alignment of the proposed Blar Mor to Coal Link Road; it identifies the Blar Mor to Caol Link Road as a common deficiency; and it sets out the requirement for landowners / developers of certain site allocations in the plan to contribute towards the link road's design and construction.
2. The proposed development conflicts with Policy 34 Settlement Development Areas of the adopted Highland-Wide Local Development Plan (April 2012) and its engagement of Policy 28 Sustainable Development. In respect of the safeguarded alignment of the Caol Link road within the adopted West Highland and Islands Local Plan (and its replacement plan) the proposed development is seen to be in conflict with the eighth criterion of Policy 28 which requires proposals to be assessed in respect of its "impact on ... approved routes for roads and rail links."

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Background Papers: Documents referred to in report and in case file.
Relevant Plans: Location and Site Plan 01(A2) Dated - 5/09/16

