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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2173
- Site address: land south-west of Fair na Scur, Arisaig, Highland PH39 4NU
- Appeal by James Colston against the decision by The Highland Council
- Application for planning permission 16/00912/FUL dated 1 March 2016, refused by notice dated 18 April 2017
- The development proposed: dwelling house
- Date of site visit by Reporter: 21 August 2017

Date of appeal decision: 5 September 2017

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## 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 consists of the Highland-wide Local Development Plan, adopted in 2012, and, so far as parts of it remain in force, the West Highland and Islands Local Plan, adopted in 2010.

2. In the light of the development plan, I find that the main issues in this appeal are: the contribution that the proposed house would make to the economic and social development of the Arisaig community; whether the proposal would constitute an acceptable pattern of development; the effect of the proposed development on the woodland within which it would be located; and the effect of the proposed development on the landscape.

### *The Highland-wide Local Development Plan - vision*

3. The Highland-wide Local Development Plan (paragraph 5.1), sets out the Council's vision for Highland. "By 2030 ..... We will have created sustainable communities, balancing population growth, economic development and the safeguarding of the environment ....." Paragraph 7.1 refers to the west coast's "particular, peripheral and fragile nature". I note that the appeal site is within a "fragile area" and that policy 36 (to which I give consideration in paragraphs 17 to 27, below) indicates that regard must be had to the extent to which proposals would help to support communities in fragile areas.



*The Highland-wide Local Development Plan - policy 28*

4. Policy 28, “Sustainable Design”, says that the Council will support developments which promote and enhance the social, economic and environmental wellbeing of the people of Highland. The policy then goes on to say that proposed developments will be assessed on the extent to which they accord with thirteen considerations. In relation to these considerations:

- (a) I find the proposed development is compatible to some extent with public service provision. Electricity and mains water would be available but mains drainage would not. There would be adequate road access but travel to schools would be likely to require motorised transport.
- (b) The site is not served by public transport, but, for a fit and active person, is within walking distance of Arisaig where facilities include a local shop and doctors’ surgery.
- (c) I note that the planning application drawings show a biomass plant as part of the proposed development. I find that the design of the proposed house would be likely to maximise energy efficiency. On the other hand, in terms of location, most journeys to and from the proposed house would be likely to be made by private car, which is generally the least energy-efficient means of transport.
- (d) I note that the supplementary guidance entitled “Physical Constraints on Development” includes, as one of the constraints, “Within 20m of woodland”. The proposed house would be within this distance of woodland. I give consideration to this in relation to policy 51 (paragraphs 28 to 31, below). There appears to be no other physical constraint on the proposed development.
- (e) The site of the proposed development is not brownfield.
- (f) I see no reason why steps should not be taken to minimise generation of waste.
- (g) I find that the proposed development would not have an adverse effect on individual and community residential amenity.
- (h) I find that there would be no impact on mineral deposits, prime quality agricultural land, or approved routes for road and rail links.
- (i) I find that there would be no significant impact on the resources listed in the ninth consideration, with the exception of landscape and scenery. Impact on the latter is considered in relation to policy 57 (paragraphs 45 to 50, below).
- (j) For reasons relating to impact on landscape and scenery (see policy 57, below), to settlement patterns (see policies 29 and 36, below) and to impact on semi-natural woodland (see policy 52, below), I find that the proposal would not demonstrate sensitive siting. The quality of its design would be acceptable.
- (k) I find that the proposed development would be neutral in relation to promoting varied, lively and well-used environments.

- (l) I find that that the reference to special needs and disadvantaged groups is not relevant to the proposed development.
- (m) The proposed development would contribute to the economic and social development of the community insofar as it would help retain and maintain the population of the Arisaig community.
5. From the foregoing, and with regard to the extent to which the proposed development accords with the thirteen considerations, I find that some aspects of the proposed development would accord and some aspects would not. My conclusion is that the proposed development would not be not so sustainable as to qualify for support from policy 28.
6. Policy 28 goes on to say that developments which are judged to be significantly detrimental in terms of the above considerations will not accord with the plan. I find that there would be significant detriment in relation to proximity to woodland, significant impact on landscape and scenery and failure to demonstrate sensitive siting.
7. Policy 28 says that all proposals must demonstrate compatibility with the “Sustainable Design Guide” supplementary guidance. The guidance is based on four principles: conserving and enhancing the character of the Highland area; using resources efficiently; minimising the environmental impact of development; and enhancing the viability of Highland communities.
8. I find that the proposed development would be likely to accord generally with efficient use of resources and would result in some enhancement of the local community in so far as such enhancement would arise from any proposal that would help retain the local resident population. On the other hand, the proposed development would not conserve and enhance the character of the Highland area in that the site is part of a semi-natural woodland. The proposed house would encroach into an area that has value both for the flora and fauna associated with the woodland and for its landscape quality. Rather than conserving and enhancing this value, it would diminish it.
9. Nor would the proposed development minimise the environmental impact of development. The West Highland and Islands Local Plan identifies a settlement development area at Arisaig. Development such as that proposed by the Appellant, if located within the settlement development area, would have much less environmental impact than that which would arise from development on the appeal site. In connection with this, I note that paragraph 2.4.3 of the “Sustainable Design Guide” supplementary guidance says “Tree felling and the destruction of semi-natural habitats such as woodlands, hedgerows, wetlands and meadows should be avoided”.
10. From all the foregoing, I find that, while the proposed development would meet the requirements of a number of aspects of policy 28, it would not accord with several important considerations. My conclusion is that, on balance, the proposed development would not accord with policy 28.

*The Highland-wide Local Development Plan - policy 29*

11. Policy 29 is headed “Design Quality and Place-Making”. The Council’s Planning Committee report (section 6.1) says that this policy is relevant. I find that the policy includes reference to development in built-up areas and to development on a larger scale than that of a single house and that these parts of the policy are not relevant to the proposed development.

12. I agree with the Council that the design of the proposed house is not in itself an issue. However, I find that the proposed development would erode the woodland character of its immediate surroundings and would thus not demonstrate respect towards the distinctiveness of the local landscape.

13. From my inspection, and taking into account submissions, I find that the historic pattern of development consists of dwellings grouped together to form the village at Arisaig and a very few - perhaps no more than half-a-dozen - dwellings in the extensive area south of Arisaig and along the road to Rhue. Notwithstanding that a significant number of houses have more recently been constructed in the area south of Arisaig, I find that, to accord with the historic pattern, a new dwelling should normally be located on a site that relates to Arisaig village or, if it is to be in the area to the south, it should have some clear and long-term functional reason for being so located. I find that there is no such reason in the present case. I conclude that the proposed development does not have regard to the historic pattern of development in the locality.

*The Highland-wide Local Development Plan - policy 35*

14. Policy 35 is entitled “Housing in the Countryside (Hinterland areas)”. The Appellant, while acknowledging that the appeal site is not in a hinterland area and policy 35 does not apply, draws attention to one of exceptions to the policy’s presumption against development. The exception is a dwelling “for a retiring farmer and their spouses; or for a person retiring from other rural businesses on land managed by them for at least the previous ten years, where their previous accommodation is required for the new main operator of the farm, or rural business”. The Appellant says that this exception essentially describes his circumstances.

15. I am not aware of the reason, if any, why a similar exception is not included in policy 36, which is the development in the countryside policy that applies to the appeal site. I note that policy 35 says that “Where exceptions are justified, all proposals should still accord with the general policies of the Plan and the Housing in the Countryside / Siting and Design: Supplementary Guidance”. Elsewhere in this decision notice, I find that the proposed development does not accord with certain general policies of the Highland-wide Local Development Plan.

16. My conclusion is that the policy 35 exception gives no significant support to the proposed development.

*The Highland-wide Local Development Plan - policy 36*

17. Policy 36 is headed “Development in the Wider Countryside”. As noted by the Appellant, the supporting text (paragraph 19.9.1) says that the Council “continues to support the development of rural areas, which comprise much of Highland because this will help maintain population, infrastructure and services”. I also note that the plan goes on to say that “There are in particular many crofting and other ‘townships’ in the Plan area, not defined by Settlement Development Areas but where there is significant settlement within a locality and which is identifiable loosely as an established rural community”.

18. From submissions and from my inspection, I find that the appeal site is not within a crofting or other kind of township. I also find that support for development in rural areas must be seen in the context of policies that seek to safeguard the environment.

19. Proposals are to be assessed against the six bullet points contained in policy 36. I find that the first three bullet points are relevant to the proposed development.

20. With regard to siting, my findings in paragraphs 4(j), 6 and 8 above lead me to conclude that the proposed house would not be acceptable in terms of siting. With regard to design, I find that the design of the proposed house would be acceptable.

21. In paragraph 13, above, I conclude that the proposed development does not have regard to the historic pattern of development in the locality. With regard to the extent to which the proposed development would be sympathetic to existing patterns of development in the area, I note that there is relatively recent development of individual houses in the area south of Arisaig. These houses do not extend as far south as Fair na Scur and the locality of the appeal site. So far as I am aware, the proposed development would be the first within the ancient (or semi-natural) woodland south of Fair na Scur. From all the foregoing, I find that the proposed development would not be sympathetic to existing patterns of development in the area.

22. The landscape south of Fair na Scur and in which the appeal site is located is characterised by a lack of built development and by its woodland vegetation. I find that the proposed development would not be compatible with the character and capacity of this landscape.

23. Policy 36 goes on to say that “regard will also be had to the extent to which they [proposals] would help, if at all, to support communities in Fragile Areas ..... in maintaining their population and services by helping to re-populate communities and strengthen services”. I have already found (paragraph 4(m), above) that the proposed development would contribute to the economic and social development of the community insofar as it would help retain and maintain the population of the Arisaig community. In the context of policy 36, I find that this is an important consideration that carries much weight.

24. Policy 36 also refers to supplementary guidance. I find that there would be conflict with the “Sustainable Design Guide” (paragraphs 7, 8 and 9 above).

25. Regarding the supplementary guidance entitled “Housing in the Countryside and Siting and Design”, the Appellant refers to paragraph 4.3: in the wider countryside, “the

approach to housing development is more permissive”. Paragraph 4.3 goes on to say that “the identification of appropriate development sites within the wider countryside should adopt a sequential approach when considering development proposals”. Paragraph 7.1 says that in the wider countryside “development of new housing of an appropriate location, scale, design and materials may be acceptable, particularly where it supports communities experiencing difficulty in maintaining population and services. In these areas, the settlements identified within the relevant Local Plans are the preferred locations for most development.”

26. I take it that, as Arisaig is within a fragile area, it is a community that is experiencing difficulty in maintaining population and services. This reinforces the finding in paragraph 23, above. However, I note that identified settlements, which include Arisaig, are the preferred locations for most development. I also note that paragraphs 7.2 and 7.3 of the guidance make clear that housing development must also be assessed against relevant development plan policies.

27. From all the above, I find that the proposed development gains important and significant support from policy 36 in that it would help retain and maintain the population of the Arisaig community. On the other hand, the proposed development would be contrary to a number of other parts of policy 36, including the need for appropriate siting, for being in sympathy with existing patterns of development and for compatibility with the character and capacity of the landscape. My conclusion is that, on balance, the proposed development would not accord with policy 36.

#### *The Highland-wide Local Development Plan - policy 51*

28. Policy 51 is headed “Trees and Development”. The policy says that adequate separation distances will be required between established trees and any new development. In the Statement of Appeal (paragraph 10(1)), the Appellant says that the proposed development would result in the loss of only three trees. In its Committee Report (section 8.4), the Council says there are 19 further trees, the canopies of which are within 10 metres of the proposed house, “and it is reasonable to expect that whilst it is proposed to retain and protect these trees, it is likely that most of these would be removed either during construction or afterwards to facilitate construction and to provide a reasonable standard of amenity for the occupants of the dwelling”.

29. I find no reason to doubt that it is the Appellant’s intention to retain the 19 trees to which the Council refers and that most, if not all, of these trees would be retained during the period that the house was occupied by the Appellant. However, the house is likely to remain on the site for a period well beyond that during which it would be occupied by the Appellant, and other occupants would take his place.

30. It is my experience that residents very commonly have concerns about trees that are close to their houses or their garden ground. These concerns include loss of light, leaf-fall blocking gutters, possible shedding of branches or windthrow posing a threat to safety (if not to the house itself, then to the curtilage) and root damage to foundations or services. In addition, many residents wish to have some amenity garden ground adjacent to their houses. From this, I find that, in the fullness of time, it is likely that a significant proportion the 19 trees would be removed.

31. I conclude that the separation distance between the proposed house and a significant number of existing trees would not be adequate and that the proposed development would not accord with this aspect of policy 51.

*The Highland-wide Local Development Plan - policy 52*

32. Policy 52 is headed “Principle of Development in Woodland”. The policy says “The applicant is expected to demonstrate the need to develop a wooded site”. The Appellant (Appeal Statement, paragraph 46) says that there is a need to develop the present site. “It is the only site available to the [Appellant] to enable him and his wife (and family) to continue living in the local community once he has retired (and his present tied accommodation is no longer available to him)”.

33. I appreciate from submissions that the Appellant acquired the site at a time when planning policy appeared to favour the proposed development. I am not convinced that the Appellant’s ownership of the site demonstrates a need to develop the site. In the present development plan, two sites are identified in Arisaig for housing development and other land within the Settlement Development Area may well be suitable for erection of a single house. As already noted (paragraph 25, above), settlements are the preferred locations for most developments. The Appellant’s acquisition of and commitment to the appeal site is unfortunate, but I do not find that it amounts to a need in terms of planning policy.

34. Policy 52 says that the Council will maintain a strong presumption in favour of protecting woodland resources. As already mentioned, the Appellant says that the proposed development would result in the loss of only three trees. I find that, in relation to individual trees identified in the Tree Schedule and Tree Constraints plan, this is correct.

35. I note that the Tree Constraints Plan includes a notation for “Other Small Trees and Scrub”. This notation applies to all of the site outwith the canopies of the identified individual trees and outwith the relatively small part of the site described as “Open Habitat”. From my inspection of the site, I note that within the site there is a number of trees that are not identified in the Tree Schedule and that presumably come into the category of “Other Small Trees and Scrub”. These include:

- a multi-stemmed birch about one metre south of the gable end of the south elevation of the proposed house;
- a birch tree about two metres north of tree 2817;
- a birch tree about two metres north-west of tree 2817;
- about a dozen closely-grouped birch trees on the line of the gable end of the west elevation of the proposed house;
- a rowan tree in the corner where the west wing would meet the south wing; and
- a line of birch trees beside the access track and roughly on the line of the north-east elevation of the proposed outbuilding.

All of these trees are well-established and contribute to the wooded character of the site. Their proximity to the proposed house and outbuilding means that all, or virtually all, would have to be removed if the development were to proceed. I find that removal of these trees along with removal of three trees that are in the Tree Schedule would open up the site to a

significant extent. What is at present a small glade partially screened from the access track would become a more open clearing.

36. The Appellant refers to “the small scale nature of the proposed development and its minimal or negligible impact on the existing woodland” and to “the minimal impact of the proposed development on the designated woodland, in particular, when regard is also had to the availability of compensatory planting to offset the trees that will be removed by the development” (Statement of Appeal, paragraphs 46 and 48).

37. I accept that the designated woodland of which the appeal site forms part extends over a considerable area and that the appeal site is only a very small proportion of the whole. I find nothing in development plan policy that suggests individual parts of a woodland have less value and are more likely to be acceptable for development if they are part of a woodland that covers an extensive area.

38. Regarding compensatory planting, I find it likely that there would be limited scope to locate such planting in the area between the retained trees and the proposed house. I find new planting, even after some years of growth, would not significantly reduce the effect of all the tree removal necessitated by the proposed development.

39. I find that the opening up of the site that would be required would be contrary to the strong presumption in favour of protecting woodland resources.

40. I note that policy 52 says that, for housing proposals within existing woodland, “applicants must pay due regard to its integrity and longer term management”. The Appellant (Statement of Appeal, paragraph 47) “will continue to apply good woodland management practices to the site including, in particular, clearing the site of rhododendron, which will encourage native growth and biodiversity”.

41. From my inspection, I note that there is a limited amount of rhododendron within the appeal site. There were also numerous seedlings of oak, birch and alder. The Appellant says that seeds that do germinate are out-competed by bracken and are also eaten by deer. At the time of my inspection, it was apparent that bracken within the site had been cut down some time previously. I appreciate that the bracken, if undisturbed, would inhibit tree regeneration within what is no more than a small glade and that deer can graze seedlings. I find that the benefits of rhododendron clearance and woodland management within the site would be offset by the loss of trees that would be associated with the proposed development and the further loss of trees likely to occur in the longer-term.

42. I note from section 2.1 of the Planning Committee report that the appeal site is part of a western acidic oak woodland, designated as ancient woodland of semi-natural origin. I find that this means that the proposed development is subject to the part of policy 52 that refers to a stronger presumption against development that would affect inventoried woodland or designated woodland. I find that the opening up of the site would be contrary to this part of policy 52.

43. Policy 52 supports development proposals that offer clear and significant public benefit. In the present case, I find that there would be a public benefit insofar as the proposed development would help retain and maintain the population of the Arisaig



community. I find that this public benefit would not outweigh the presumptions against development in woodland.

44. Taking all aspects of the policy into account, my conclusion is that, overall, the proposed development would be contrary to policy 52.

*The Highland-wide Local Development Plan - policy 57*

45. Policy 57 is entitled “Natural, Built and Cultural Heritage”. The policy applies in the present case because the appeal site is within two of the categories under the heading “Features of Local/Regional Importance” in Appendix 2 of the plan. The two categories are special landscape areas and inventoried woodland.

46. The appeal site is within the Loch Quoich - Loch Morar special landscape area. This is, as stated by the Appellant, a vast area. The Appellant says “Given the small and secluded nature of the proposed development and the vast size of the Special Landscape Area (SLA) the development will not have any impact on the SLA, far less an unacceptable impact”.

47. As with woodland under policy 52, I find nothing in development plan policy that suggests individual parts of a special landscape area have less value and are more likely to be acceptable for development if they are part of a special landscape area that covers an extensive area.

48. I agree that the proposed development would be largely hidden from the public road. On the other hand, it would be visible from a short section of core path that goes past the site.

49. I find that the effect of the proposed development on the special landscape area would be very localised but would be adverse nonetheless and would not accord with policy 57.

50. Under policy 52, I find the proposed development would be contrary to the presumptions in favour of protecting woodland resources. For similar reasons, I find that the proposed development would have an unacceptable impact on the designated woodland and so would not accord with policy 57.

*The Highland-wide Local Development Plan - policies 58, 59 and 60*

51. Policy 58: “Protected Species”, policy 59: “Other Important Species” and policy 60: “Other Important Habitats and Article 10 Features” are invoked by the Council on the basis that “6 of the trees that are likely to be lost have the potential for bats to be present” (Planning Committee report, section 8.4). The Appellant (Statement of Appeal, 5(8)) says that this is speculative and in any event planning permission could be subject to a condition requiring a satisfactory bats survey.

52. I note that the Council does not refer to bats in its suggested planning permission conditions, but does suggest that any permission be accompanied by a note to inform the developer that any mature trees which are to be felled, lopped or topped must be surveyed

for bats prior to the works being carried out. “If a bat roost is identified work must stop and further advice sought from SNH's area office. It is an offence to interfere with bats and/or their roosts without a licence and strict penalties will be applied through the courts where a licence has not been obtained”.

53. I find that there is no evidence that bats or any other protected species are present within the appeal site. Taking this into account and the Council's suggestion that the matter might be addressed by use of an informative note, I do not attach weight to the Council's contention that the proposed development is contrary to policies 58, 59 and 60.

#### *The Highland-wide Local Development Plan - policy 61*

54. Policy 61 is headed “Landscape”. I find that policy 61 is directed chiefly to the design of development. I have already (paragraph 12, above) agreed with the Council that the design of the proposed house is not in itself an issue. The principle of whether the development should be allowed at all in an area of special landscape value is addressed under policy 57.

#### *The development plan - conclusion*

55. I find that the proposed development would accord with certain aspects of policies in the Highland-wide Local Development Plan. In particular, the proposed development would contribute to the economic and social development of the community insofar as it would help retain and maintain the population of the Arisaig community. This is an important consideration, but in my view it is outweighed by my findings that the proposed development would be contrary to policies 28, 29, 36, 51, 52 and 57 of the Highland-wide Local Development Plan. Taking this and the extant provisions of the West Highland and Islands Local Plan into account, my conclusion is that the proposed development does not accord with the development plan.

#### *Other material considerations - listed building*

56. About 110 metres north-east of the appeal site is Fair na Scur, a house which is also a listed building. I find that the separation distance and the screening effect of trees within the grounds of Fair na Scur mean that the proposed development would not have any significant adverse effect on Fair na Scur and its setting.

#### *Other material considerations - national policies*

57. Paragraph 1.1 of the National Planning Framework says that the Government Economic Strategy aims to share the benefits of growth by encouraging economic activity and investment across all of Scotland's communities, whilst protecting natural and cultural assets. A sustainable, economically active rural area, which attracts investment and supports vibrant, growing communities, is essential to the Scottish Government's vision. The Government is also committed to safeguarding Scotland's natural and cultural assets (paragraph 1.6). Flexibility is required to allow for different approaches to housing provision that respond to varying local requirements (paragraph 2.10). The Government does not wish to see development in Scotland's rural areas unnecessarily constrained: more people will live and work in rural areas as digital links and opportunities for remote working and

new enterprises continue to grow. Remote areas are likely to benefit from a more flexible approach, particularly where it helps to sustain fragile communities. Facilitating the delivery of affordable rural housing remains a priority to support community vitality and increase population growth (paragraph 2.26).

58. The above approach is carried through into Scottish Planning Policy, in which paragraph 77 says:

In remote and fragile areas and island areas outwith defined small towns, the emphasis should be on maintaining and growing communities by encouraging development that provides suitable sustainable economic activity, while preserving important environmental assets such as landscape and wildlife habitats that underpin continuing tourism visits and quality of place.

59. In applying these policies to the proposed development, I find that a balance has to be struck between the need to encourage development and the need to protect natural and environmental assets. I note the particular references in Scottish Planning Policy to protecting and enhancing ancient semi-natural woodland (paragraphs 194 and 216). I do not accept the Appellant's contention that the proposed development would have a negligible impact on the designated woodland. My conclusion is that, while the proposed development has support from national policy with regard to encouraging development in fragile areas, this is outweighed by the adverse effect on natural assets, in particular the woodland.

#### *Other material considerations - affordability*

60. The Appellant says that it is not possible for those who have worked in a remote, economically disadvantageous, area for many years to compete for houses that come on the market with bidders from more prosperous parts of the country. A self-build house on a new development site provides an answer to that problem.

61. I accept that there is an affordability issue regarding existing houses, but this does not address the point that a new development site for a self-build house might be found within the Arisaig settlement development area.

#### *Overall conclusion*

62. My overall conclusion is that the proposed development does not accord with the development plan and that there is no material consideration which would justify granting planning permission.

*R W Maslin*

Reporter