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Ms E McArthur  
Highland Council  
Sent By E-mail

Our ref: PPA-270-2199  
Planning Authority ref: 18/01441/FUL

16 November 2018

Dear Ms McArthur

**PLANNING PERMISSION APPEAL: HILLSIDE SOUTH OBBE KYLEAKIN, ISLE OF SKYE IV41 8PN**

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/>.

We collect information if you take part in the planning process, use DPEA websites, send correspondence to DPEA or attend a webcast. To find out more about what information is collected, how the information is used and managed please read the [DPEA's privacy notice](https://beta.gov.scot/publications/planning-and-environmental-appeals-division-privacy-notice/) - <https://beta.gov.scot/publications/planning-and-environmental-appeals-division-privacy-notice/>

I trust this information is clear. Please do not hesitate to contact me if you require any further information or a paper copy of any of the above documentation.

Yours sincerely

*Christopher Kennedy*

**CHRISTOPHER KENNEDY**  
**Case Officer**  
**Planning and Environmental Appeals Division**





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Decision by Keith Bray, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-2199
- Site address: Hillside, South Obbe, Kyleakin, Isle of Skye, IV41 8PN
- Appeal by Mr R Wilkie against the decision by The Highland Council
- Application for planning permission 18/01441/FUL dated 27 March 2018 refused by notice dated 8 August 2018.
- The development proposed: demolition of garage and erection of ancillary accommodation
- Date of site visit by Reporter: 2 November 2018

Date of appeal decision: 16 November 2018

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## Decision

I dismiss the appeal and refuse planning permission.

## Preliminary matter

1. The planning application submitted includes the erection of ancillary accommodation. It is argued in representations that the proposal should be considered as a new house. I am content that the separate, self-contained living accommodation proposed is subservient to the main house and requires planning permission. As such, I find the description in the planning application is adequate.

## Reasoning

### Development Plan

2. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are the impacts of the proposal on the:

- character of the area;
- amenity of a neighbouring property; and
- parking arrangements and road safety.



3. The development plan for this appeal is the 2012 Highland-Wide Local Development Plan. I find policies 28, 29 and 34 are of relevance and were used in the council's reasons for refusal. No other development plan policy is suggested by the appellant.

4. Policy 28 sets out a number of considerations against which development should be assessed. A positive contribution to the quality of a place is sought by policy 29 and policy 34 supports development within settlements.

5. During the consideration of the planning application five representations were received. Two support the development and three object.

#### *Character of the area*

6. The siting, design and scale of the proposed building reflect the existing pattern of buildings in the area. The form of the building would relate well to adjacent development when viewed travelling through South Obbe and from across the bay in Kyleakin. I also find that the proposed materials relate positively to the surrounding area. Therefore, I conclude the requirements of policies 28 (bullet point 10) and 29 are met regarding compatibility with settlement pattern. I also conclude policy 34 is satisfied; as the building is within a settlement and respects existing patterns of development.

#### *Amenity of a neighbouring property*

7. The proposed accommodation unit would be sited in an elevated position south east of Covesea Cottage. It would be orientated at ninety degrees to the Cottage. The western gable wall of the proposal would approximately be in line with the eastern garden boundary of Covesea Cottage. As a consequence of the proximity and elevation of the new building, I find that three bedroom windows, a bathroom window, and three living room windows would overlook the private garden space of Covesea Cottage. These windows would also look into the southern window of the protruding structure of Covesea Cottage on its east elevation. The other windows along that east elevation are less impacted due to the angle at which they would be viewed.

8. The appellant indicates that overlooking could be mitigated by boundary treatment and/or by using obscure glass on the north facing bedroom and bathroom windows. To be effective, a screen fence or planting would need to be a significant height; three metres or more. That would render boundary treatment impractical. I also find that all the proposed north facing windows would have an impact on the privacy of Covesea Cottage. A planning condition which required all north facing windows to be obscure glass would be a fundamental change to the building's design. In such circumstances, a planning condition would not meet the test of reasonableness as it would be unduly restrictive. The council's proposed condition to remove all but the bathroom window from the north elevation would be similarly restrictive.

9. The appellant has argued that the windows of Hillside Cottage look in the same direction and are acceptable. I find that Hillside Cottage is at a greater distance from Covesea Cottage. Furthermore, my assessment must focus on the specific impacts arising from the new proposal.

10. On my site inspection I was able to appreciate the adjacency and overbearing effect that the north facing windows would have in relation to Covesea Cottage and the privacy of its garden. I consider that the development, as currently designed, would have an unacceptable adverse impact on the privacy and amenity of Covesea Cottage. The proposal would therefore fail to meet a requirement of policy 28 (seventh bullet point) in relation to residential amenity.

#### *Parking arrangements and road safety*

11. Parking and road safety concerns, including the risk of further accidents, are raised by third party representations in this case.

12. The council accepts that two separate accesses exist to serve Hillside Cottage. As the proposal does not include the construction of a new or improved access, I find that the council guidelines on 'access to single houses' need not apply. In addition, because the accesses exist and the road is not heavily trafficked, a requirement for adequate on-site turning need not apply. I find that visibility to and from the accesses, while not ideal, would not be reduced as a consequence of the development. Notwithstanding all of the above, I agree with the council that the existing arrangements are below the standards that would be expected with the construction of a new access.

13. The appellant amended the plans to show three car parking spaces of relevant dimensions. After examination of the council's car parking guidelines, I consider a combined requirement (with Hillside Cottage) of three appropriately sized car parking spaces is a reasonable requirement. It allows one extra space to be provided for the new accommodation in addition to the two spaces required for Hillside Cottage. I note however that this number is not a direct requirement of the development plan.

14. The council states the amended parking layout is not practical as it requires realignment of a wall, closer to the highway, with a detrimental effect on the road structure. Permission, under section 56 of the Roads Scotland Act 1984, may be required to alter the wall. It also appears that an alteration in this location may not be permitted by the council. However, I find that two car parking spaces can be physically accommodated on the site, to the south of the new accommodation, as presented on the amended plan. Any requirement under the Roads Scotland Act is a separate matter. Furthermore, my assessment should not seek to duplicate or second guess the outcome of another consenting regime.

15. If two cars were parked, as in the amended plan, they would experience difficulty in manoeuvring on and off the road. I do not agree with the appellant that because the accesses remain unchanged the risk would remain the same. The existing requirement of two car parking spaces for Hillside Cottage can be shared between the two accesses (although I note the appellant argues the current existence of three spaces). The need for three parking spaces, as a consequence of the proposal, would remove the ability to manoeuvre a single car outside Hillside Cottage to maximise visibility. I agree with the council that road safety risks would be increased by the proposal. This would be as a consequence of the intensification of car parking and the resultant difficulties in manoeuvring to and from a single track road.

16. Although policy 28 does not address road safety explicitly; all developments are expected to be compatible with roads provision (bullet point one). I find that the proposed parking arrangements and resultant difficulty in manoeuvring a vehicle onto the road would not be compatible with the existing road due to an unsatisfactory increase in road safety risk. Policy 29 seeks to ensure that people can move safely within and outwith a site. In that regard, I conclude there would be a conflict with the policy in relation to increased road safety risks on a road with limited passing places, poor visibility, and abnormal vertical and horizontal alignment.

### Material Considerations

17. No specific part of Scottish Planning Policy has been brought to my attention by parties in this case. However, I note from the document that decisions should be guided by a number of principles. These include the protection of the amenity of new and existing developments. Scottish Planning Policy also goes on to say that decisions should take into account the implications of new development on road safety.

18. The occupier of Covesea Cottage does not have concerns with regard to overlooking and privacy. However, I do not consider the overlooking to be acceptable for the current or any future occupier of the cottage. In my consideration, I have to take into account that ownership and occupancy may change over time.

19. The possible use of Hillside Cottage as a 'bed and breakfast' has also been raised. The council has been in correspondence with the appellant on that matter. However, the council has not indicated that Hillside Cottage should be regarded as anything other than a dwelling house. I have therefore considered this appeal in that light.

20. The appellant makes reference and comparisons to a recent development at Moyle Cottage. However, I must focus on the specific circumstances and merits of this appeal.

21. The guidance for house extensions and other residential alterations is 'non-statutory' guidance for extending a house. As the proposal is not extending a house, I find the guidance has limited relevance to this appeal other than assisting to establish the proposal as self-contained living accommodation and the need for adequate parking for it.

22. Finally, concern has been expressed in relation to construction noise and disruption. Such issues can normally be managed through the implementation of planning conditions.

### Conclusion

23. I therefore 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. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

*Keith Bray*

Reporter