

Agenda Item	6.1
Report No	PLS 039/19

HIGHLAND COUNCIL

Committee: South Planning Applications Committee

Date: 11 June 2019

Report Title: 18/05901/S42: Paul Nicoll
Balnagowan Island, Duror

Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Application under S42 for non-compliance with Condition 3 of planning permission 11/00990/FUL

Ward: 21 – Fort William and Ardnamurchan

Development category: Local

Reason referred to Committee: Community Council objection

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

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

1. PROPOSED DEVELOPMENT

1.1 Condition 3 of permission 11/00990/FUL states:

“This permission relates to the provision of holiday accommodation. For the purposes of this condition, holiday accommodation is accommodation which shall not be occupied by the same person or group of persons for a period in excess of 6 weeks during any one calendar year. The accommodation hereby permitted shall not authorise the use of the proposed development for human habitation during the period of 2 consecutive weeks from the 6th January each year, or such other consistent time period of 2 weeks as may be agreed in writing by the Local Planning Authority. In order to facilitate the policing/enforcement of the forgoing, a register of occupiers of the premises to which this planning permission relates shall be made available to the officers of the Local Planning Authority upon request, following 24 hours notice.

Reason: *To ensure that the property is used for holiday accommodation only and to prevent permanent residential use in a location where such development would be inappropriate. In accordance with policy 3 of The Highland Structure Plan 2001.”*

1.2 The bothy was essentially completed in 2015, and it has been used as a second home/holiday cottage by the owner and his family. It comprises an open living space occupying most of the ground floor, with a bathroom at the rear, a central staircase and 2 bedrooms in the roof space. There is a shed to the rear which was separately approved, and this houses a diesel generator, and the kit for some ground mounted solar PV panels which are sited close to the bothy. It also houses equipment for land management purposes.

1.3 The island is not subject to any formal landscape, nature conservation or historical designations.

1.4 The bothy has an open fire, and heat and hot water are provided by the solar PV backed up by the generator. It is the only residential property on this small island, which lies less than a mile offshore, and it is accessed by boat, generally from Linnhe Marine, south of Appin (in Argyll). The bothy has its own water supply from a bore hole, which is pumped to a supply tank, and there is a septic tank for the foul drainage. There are no services or facilities on the island, including no jetty or pier.

1.5 Pre Application Consultation: No pre application enquiries.

1.6 Supporting Information: Supporting Statement

1.7 Variations: None

2. SITE DESCRIPTION

2.1 Eilean Balnagowan comprises approx. 36 acres (14.5Ha) and lies in Loch Linnhe off the coast of Appin, and to the SW of Cuil Bay. The bothy is sited at site C on the site location plan, at the back of a small SW facing bay in the southern part of the island. The bay in which the bothy is situated is fenced off between two rocky

ridges, however there is no enclosure or residential curtilage around the buildings.

- 2.2 The island consists of 2 rocky ridges joined by a strip of lower ground. There is scrubby woodland, low rocky cliffs and more open areas with bracken and brambles. The current owner has cleared some of the bracken and brambles and introduced a small flock of Soay sheep. The island has many breeding seabirds and other ground nesting birds, and otters and seals are known to breed around the shore.
- 2.3 Approximately 200m north of the bothy are the remains of a circular stone walled enclosure, which is listed on the Historic Environment Record, but no details are given.
- 2.4 The island is occasionally visited by kayakers etc., who can camp however the lack of facilities limits the amount of disturbance by visitors.

3. PLANNING HISTORY

- | | | | |
|-----|--------------|---|--|
| 3.1 | 11/00990/FUL | Erection of bothy | GRANTED
17.10.2011 |
| 3.2 | 13/03945/PNO | General purpose building for storage of feed, machinery, tools etc, and as emergency winter housing for livestock | PRIOR
APPROVAL
GRANTED
14.01.2014 |

4. PUBLIC PARTICIPATION

- 4.1 Advertised: No
- Timeous representations: 0
- Late representations: 0
- 4.2 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet www.wam.highland.gov.uk/wam.

5. CONSULTATIONS

- 5.1 **Duror and Kentallen Community Council** object on the following grounds:

The Council was appreciative of the valid reasons for the imposition of condition 3 and commented that there had been no change in circumstances prevailing at that time. The eco system on the island is fragile and any further development that might result from the lifting of condition 3 would threaten the nesting habits of the birds and sea life in the surrounding waters. The Council is opposed to any commercialisation of the island. The Council requests that condition 3 remain in force.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

- 28 - Sustainable Design
- 30 - Physical Constraints
- 36 - Development in the Wider Countryside
- 44 - Tourist Accommodation
- 49 - Coastal Development
- 56 - Travel
- 58 - Protected Species
- 59 - Other important Species
- 60 - Other Important Habitats
- 77 - Public Access

6.2 West Highland and Islands Local Plan 2010 (as continued in force)

6.3 West Highland and Islands Local Development Plan

The relevant approved local development plan is under review and its replacement, the West Highland and Islands Local Development Plan (WHILDLP) is at a very advanced stage (the Reporters' Report was received in May 2019). The application site is in the Wider Countryside, Duror being the nearest "Growing settlement".

6.4 Highland Council Supplementary Planning Policy Guidance

- Highland's Statutorily Protected Species (March 2013)
- Housing in the Countryside and Siting and Design (March 2013)
- Sustainable Design Guide (Jan 2013)

7. OTHER MATERIAL CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

82. In remote rural areas, where new development can often help to sustain fragile communities, plans and decision-making should generally:

- encourage sustainable development that will provide employment;
- support and sustain fragile and dispersed communities through provision for appropriate development, especially housing and community-owned energy;
- include provision for small-scale housing and other development which supports sustainable economic growth in a range of locations, taking account of environmental protection policies and addressing issues of location, access,

siting, design and environmental impact;

- where appropriate, allow the construction of single houses outwith settlements provided they are well sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies;
- not impose occupancy restrictions on housing.

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 and other planning policy
- b) the extent to which a permanent residential property, as compared with a holiday cottage, would impact on environmental protection policies
- c) the extent to which a permanent residential property, as compared with a holiday cottage, would impact on issues of access and servicing
- d) any other material considerations.

Development plan/other planning policy

8.4 The principle of allowing habitable accommodation on an uninhabited island is not specifically addressed by policy. It is considered each case should be considered on its merits. The bothy was previously granted permission on the basis that its small size, the lack of associated infrastructure and its proposed use which was to be as holiday accommodation only, would have a limited impact on the environment. The holiday occupancy condition was therefore imposed to ensure this environmental impact was limited.

Impact on environment

8.5 It is considered however that the relative environmental impacts of the cottage being occupied permanently compared with it being let as a holiday cottage are not significantly different. Such a planning condition would not effectively limit the impact on the environment of the island. To date, it has been used as a second home by the owner and his family, and not as a commercial holiday let. If different people were staying for up to 50 weeks a year, as allowed by the holiday occupancy condition, potentially this could have a more intensive impact on the use of the island and have a greater environmental impact than someone living there

permanently.

- 8.6 For example whether the occupants or visitors have dogs, and what kind of grazing regime the land is subject to, would have a greater impact on the environment and nature conservation interests of the island than whether the cottage is permanently occupied or used as a commercial holiday let.
- 8.6 It is considered that land management practices would impact on the environment and the nature conservation of the island rather more than a planning restriction on the occupancy.

Access and servicing

- 8.7 The island is only accessible by boat, and the current owner travels in from Linnhe Marine and transfers to a small rowing boat to come ashore, leaving his boat on a swing mooring. It is likely that if the cottage is permanently occupied there would be a further proposal for a pontoon or jetty to make regular access easier and safer. This would also make movement of livestock easier, and potentially facilitate further development on the island. Such a proposal would be the subject of a further application however and would be considered on its merits at that time.
- 8.8 A private water supply and a septic tank are in place, and are adequate for the existing cottage. As private systems, their maintenance is the owner's responsibility. The owner removes all of their waste off the island. All supplies, including wood fuel, coal and diesel are brought on to the island by the owner by boat.
- 8.9 The Council does not provide any facilities or services to the island at present. It is not known whether the Council, or other public services would be obliged to provide services to the occupiers of the cottage in the future if it was permanently occupied (eg. Social care or school transport).
- 8.10 The cottage is therefore less compatible with public service provision than a site within or close to a settlement, it is not accessible by public transport, and it would impact on habitats and scenery, which are all criteria listed in Policy 28. This policy seeks to ensure new development is sustainable. However, whether the cottage is restricted to holiday use or not would make little difference to its sustainability.

Other material considerations

- 8.11 An application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. This can ensure the wording is in line with current good practice and to ensure the conditions are suitable to regulate the proposed development.
- 8.12 In this case the permission previously granted has been implemented; the previous conditions having effectively been discharged. Permission can be granted unconditionally.

Matters to be secured by Section 75 Agreement

8.12 None

9. CONCLUSION

9.1 The impact of the cottage on the environment and nature conservation interest of the island is not considered to be significantly different whether it is restricted to holiday use only, or permanently occupied. The management of the land would be the most significant factor influencing the land cover, habitats and species present.

9.2 This is one example of an isolated cottage, situated entirely off grid and with private servicing, and this situation is repeated to a greater or lesser extent all over the Highlands. Emerging policy takes a sequential approach to the siting of new residential development, favouring settlements first because they are the most sustainable location for new residential development. However current policy does not preclude residential development in very isolated situations where there may be demands for particular services in the future. The servicing of the cottage would continue to be the responsibility of the owner, and its permanent occupation as a house would not appear to place burden on public services in the short term, however there is a chance this could change in the future if occupancy/ownership were to change. There is therefore no objection to the removal of the holiday occupancy condition.

9.3 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. IMPLICATIONS

10.1 Resource: Not applicable

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

Action required before decision issued N

Notification to Scottish Ministers N

Conclusion of Section 75 Obligation N

Revocation of previous permission N

Subject to the above, it is recommended that planning permission be **GRANTED**.

REASON FOR DECISION

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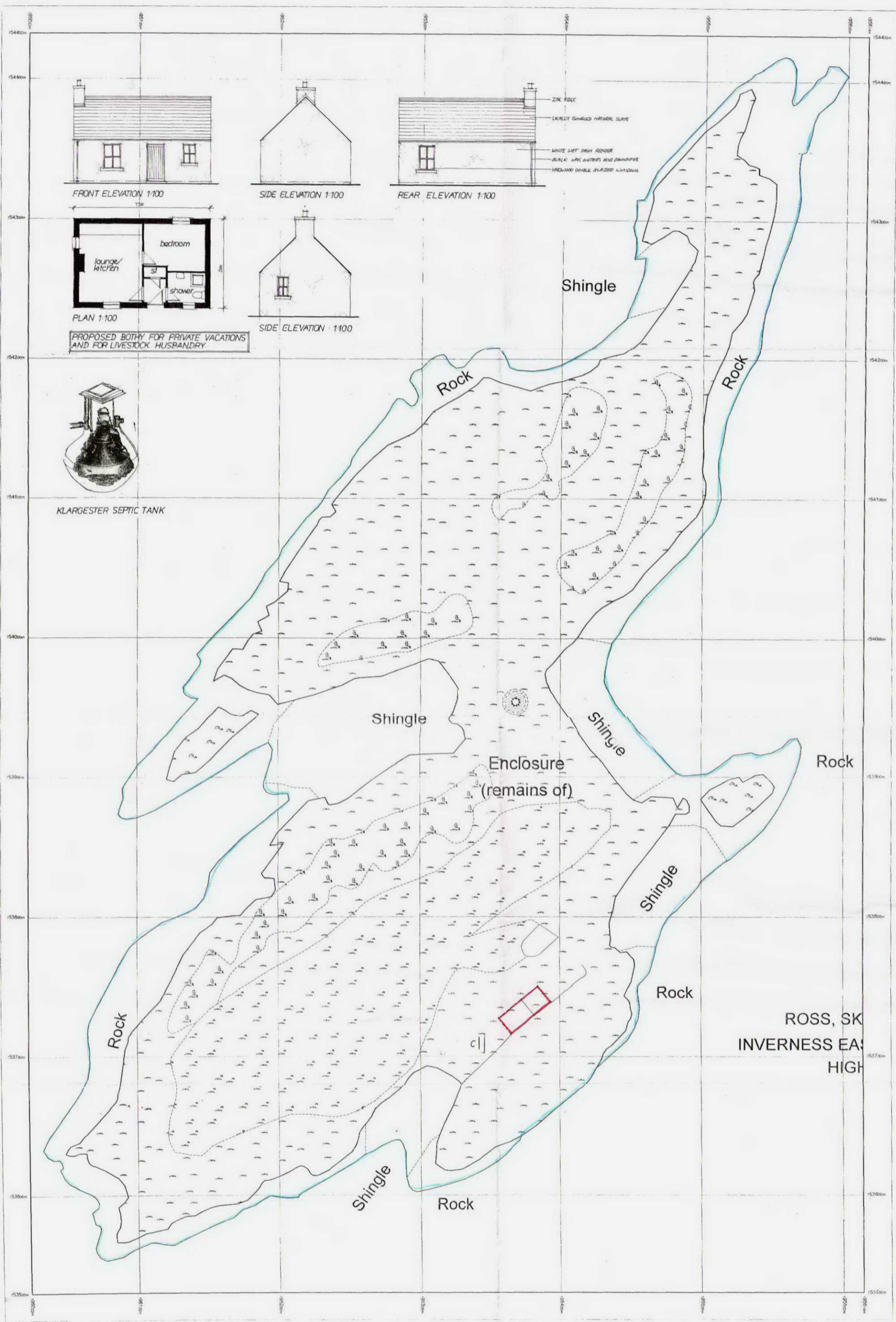
Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Septic Tanks & Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Signature: David Mudie
Designation: Area Planning Manager – South
Author: Lucy Prins
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Location plan



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